

No. 15730

United States
Court of Appeals
for the Ninth Circuit

UNITED STATES OF AMERICA,

Appellant,

vs.

JAMES P. STAPLES, BERNARD D. OSLIN
and RICHARD C. COOPER, Appellees.

Transcript of Record

Appeals from the United States District Court for the
Northern District of California, Southern Division

FILED

JAN 10 1958

PAUL S. GIBSON, CLERK



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for the Ninth Circuit

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Appellant,
vs.

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur.]

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United States District Court, Northern District
of California, Southern Division

No. 20954

IN THE MATTER OF THE PETITION OF
JAMES P. STAPLES, SEAMAN, FOR AN
ORDER SETTING ASIDE THE FORFEI-
TURE OF HIS WAGES, CLOTHING AND
EFFECTS, FOR DESERTION

PETITION

The petition of James P. Staples, a seaman, under Admiralty Rule 42, for an order setting aside the forfeiture of his wages, clothing and effects, for desertion, respectfully shows:

1. I am a merchant seaman holding Coast Guard Mariner's Document Z-394273 DI, and I have been going to sea for 14 years;
2. On or about 19 September, 1956, I signed on as a member of the crew of the Steamship USNS Escambia;
3. The ship was operated by Joshua Hendy;
4. My duties on board were Pumpman;
5. On May 5, 1957, at the Port of Sasebo, Japan, I left the ship with permission of the Master for the purpose of shore leave;
6. I did leave my clothing and effects on board;
7. On May 5, 1957, the Master logged me as a deserter;

8. The reasons for my failure to rejoin the ship are as follows:

Myself and two others were returning to the ship in a launch, still five or six miles from the ship the launch broke down and we had to be towed back ashore. In the meantime the ship sailed.

9. My ship was put to \$ None expenses because of my failure to rejoin her.

10. There is now on deposit in the Registry of this Court the sum of \$1641.20, the amount of wages due me at the time I was logged as a deserter.

11. The United States Shipping Commissioner at the Port of San Francisco does have in his custody clothing and effects left by me aboard the said ship.

12. The address where any mail to me concerning this petition should be sent is: Continental Hotel, 125 Ellis, San Francisco.

13. I came back to the United States on the Steamship Golden State Mariner, arriving at the Port of Los Angeles on June 28, 1957.

14. I came: * * * * * (4) As a member of the ship's crew, in the capacity of Steward Utility, being paid \$110 per month, plus overtime and allowances.

Wherefore, I respectfully request the Court to find that the Master erroneously entered me as a deserter, and that an order be made setting aside the forfeiture of my wages, clothing and effects, and directing the Clerk of this Court to pay me the

above-mentioned wages due, and that the United States Shipping Commissioner be directed to deliver to me all of my clothing and effects now in his custody or control.

/s/ JAMES P. STAPLES.

United States of America,
Northern District of California—ss.

James P. Staples, being first duly sworn, deposes and says: That he is the petitioner above named and that he has read the foregoing petition and knows the contents thereof; and that all statements contained therein are true.

/s/ JAMES P. STAPLES.

Subscribed and sworn to before me, this 4th day of September, 1957.

[Seal] /s/ J. P. WELSH,
Deputy Clerk, U. S. District Court, Northern District of California.

[Endorsed]: Filed September 4, 1957.

[Title of District Court and Cause No. 20954.]

ANSWER OF RESPONDENT UNITED
STATES OF AMERICA

Comes now respondent United States of America pursuant to 46 U.S.C. 706 and Admiralty Rule 42 and in answer to the petition of James P. Staples, admits, denies and alleges as follows:

I.

Answering unto Article 1, respondent admits the allegations thereof.

II.

Answering unto Article 2, respondent admits that the petitioner signed on as a member of the crew of the USNS Escambia on or about September 19, 1956.

III.

Answering unto Article 3, respondent alleges in this regard that the USNS Escambia was operated by the United States of America through its operating agent Joshua Hendy Corporation; respondent denies each and every, all and singular, the remaining allegations thereof, not herein otherwise admitted or denied.

IV.

Answering unto Article 4, respondent admits the allegations thereof.

V.

Answering unto Article 5, respondent admits that on May 5, 1957, at the Port of Sasebo, Japan, petitioner left the USNS Escambia; respondent denies that petitioner left the vessel with permission of the Master and alleges in this regard that petitioner was on duty at the time he left the vessel; respondent denies each and every, all and singular, the remaining allegations thereof, not herein otherwise admitted or denied.

VI.

Answering unto Article 6, respondent alleges that

it does not have knowledge or information sufficient to answer the allegations contained therein and upon that ground denies each and every, all and singular, the allegations thereof but alleges in this regard that petitioner did leave some clothing and effects aboard the USNS Escambia.

VII.

Answering unto Article 7, respondent admits the allegations thereof but alleges in this regard that petitioner was logged as a deserter on May 8, 1957.

VIII.

Answering unto Article 8, respondent alleges that it has no knowledge or information sufficient to answer the allegations contained therein and upon that ground denies each and every, all and singular, the allegations thereof.

IX.

Answering unto Article 9, respondent alleges that it does not have knowledge or information sufficient to answer the allegations contained therein and upon that ground denies each and every, all and singular, the allegations thereof, but alleges that the USNS Escambia was put to an expense of at least \$25.00 in this regard.

X.

Answering unto Article 10, respondent admits the allegations thereof.

XI.

Answering unto Article 11, respondent admits the allegations thereof.

XII.

The allegations of Article 12 require no answer.

XIII.

Answering unto Article 13, respondent alleges that it has no knowledge or information sufficient to answer the allegations contained therein and upon that ground denies each and every, all and singular, the allegations thereof.

XIV.

Answering unto Article 14, respondent alleges that it has no knowledge or information sufficient to answer the allegations contained therein and upon that ground denies each and every, all and singular, the allegations thereof.

Wherefore respondent prays that this matter be set down for hearing at such time as will give each party sufficient time and notice to make the necessary preparation, take the necessary depositions, subpoena the necessary witnesses, discover the full facts and present the same to the Court; and that after such sufficient time and notice and after a full hearing, findings of fact pursuant to Admiralty Rule 46 $\frac{1}{2}$ be made; and that the Petition of James P. Staples be dismissed and the above wages forfeited to the United States of America in accordance with law on the grounds that Petitioner deserted the USNS Escambia; and that the Clerk of this Court be directed to remit the said funds on deposit in the Registry to the Treasurer of the United States of America; and that the United States of America may have such other and further

relief as to the Court may seem just and equitable.

LLOYD H. BURKE,

United States Attorney,

/s/ KEITH R. FERGUSON,

Special Assistant to the Attorney
General,

/s/ JERRY W. MITCHELL,

Attorney, Department of Justice,
Proctors for Respondent.

Affidavit of Mailing Attached.

[Endorsed]: Filed September 6, 1957.

[Title of District Court and Cause No. 20954.]

CLAIM OF THE UNITED STATES TO
FUNDS IN THE REGISTRY

To the Honorable the Judges of the United States
District Court for the Northern District of
California, Southern Division, Sitting in Ad-
miralty:

The claim of the United States of America pur-
suant to Admiralty Rule 42 to the sum of \$1641.20,
now on deposit in the Registry, alleges as follows:

I.

That on September 19, 1956, petitioner James P.
Staples signed on the USNS Escambia for a for-
eign voyage which began on September 19, 1956 at
Los Angeles, California and ended on August 16,
1957 at San Francisco, California.

II.

That on or about May 5, 1957, in the Port of

Sasebo, Japan James P. Staples left the USNS Escambia and remained away from the vessel and did not join her during the remainder of her voyage, all without permission of the master.

III.

That the master of the USNS Escambia, on May 8, 1957, entered the desertion of James P. Staples in the official log book of the vessel; that pursuant to 46 U.S.C. Section 701, the wages then due to James P. Staples were forfeited for desertion, and that the said wages in the sum of \$1641.20 are now on deposit in the Registry of this Court in accordance with law.

Wherefore, claimant United States of America prays this Honorable Court to decree that the wages of petitioner James P. Staples, now on deposit in the Registry, are forfeited to the United States of America, and that the Clerk of the Court be directed to pay the wages so forfeited into the Treasury of the United States pursuant to law.

LLOYD H. BURKE,
United States Attorney,
/s/ KEITH R. FERGUSON,
Special Assistant to the Attorney
General,
/s/ JERRY W. MITCHELL,
Attorney, Department of Justice,
Proctors for Respondent and Claim-
ant, United States of America.

Affidavit of Mailing Attached.

[Endorsed]: Filed September 6, 1957.

In the United States District Court, Northern
District of California, Southern Division

In Admiralty—No. 20954

In the Matter of the Petition of James P. Staples
for an Order Setting Aside the Forfeiture of
His Wages, Clothing and Effects, for Desertion.

In Admiralty—No. 20955

In the Matter of the Petition of Bernard D. Oslin
for an Order Setting Aside the Forfeiture of
His Wages, Clothing and Effects, for Deser-
tion.

ORDER CONSOLIDATING CAUSES

It now appearing that both the above entitled
causes rest upon the same matter of right or de-
fense as shown by the petitions,

It Is Hereby Ordered that the discovery, pre-
trial and trial of the causes be consolidated.

Dated: September 13, 1957.

/s/ OLIVER J. CARTER,
United States District Judge.

[Endorsed]: Filed September 13, 1957.

In the United States District Court, Northern
District of California, Southern Division

In Admiralty—No. 20954

In the Matter of the Petition of James P. Staples
for an Order Setting Aside the Forfeiture of
His Wages, Clothing and Effects, for Deser-
tion.

Consolidated With
In Admiralty—No. 20955

In the Matter of the Petition of Bernard D. Oslin
for an Order Setting Aside the Forfeiture of
His Wages, Clothing and Effects, for Deser-
tion.

In Admiralty—No. 20956

In the Matter of the Petition of Richard C. Cooper
for an Order Setting Aside the Forfeiture of
His Wages, Clothing and Effects, for Deser-
tion.

* * * * *

ORDER CONSOLIDATING CAUSES

It now appearing that the above entitled causes
rest upon the same matter of right or defense as
shown by the petitions,

It Is Hereby Ordered that the discovery, pre-
trial and trial of the causes be consolidated.

Dated: September 27th, 1957.

/s/ MICHAEL J. ROCHE,
United States District Judge.

[Endorsed]: Filed September 27, 1957.

United States District Court, Northern District
of California, Southern Division

No. 20954

IN THE MATTER OF THE PETITION OF
JAMES P. STAPLES, SEAMAN, FOR AN
ORDER SETTING ASIDE THE FORFEI-
TURE OF HIS WAGES, CLOTHING AND
EFFECTS, FOR DESERTION

ORDER

Upon consideration of the verified petition on file herein, and after hearing and good cause being shown therefor, and it appearing to the Court that the Master erroneously entered petitioner in the log as a deserter; and that in the light of additional evidence adduced at the hearing \$1641.20 of his wages, his clothing and effects should be returned to him; and that none of his wages should be forfeited to the United States, and that the operator of the vessel is entitled to none of petitioner's wages for expenses incurred;

It Is Hereby Ordered that the Clerk of this Court draw a check in favor of James P. Staples in the sum of \$1640.05 and a check in favor of C. W. Calbreath, Clerk, in the sum of \$1.15, Clerk's fees, and

It Is Further Ordered that the United States Shipping Commissioner for the Port of San Francisco deliver to petitioner all his clothing and effects

which may be in the said Shipping Commissioner's custody or control, upon taking receipt therefor.

Dated: September 30, 1957.

/s/ MICHAEL J. ROCHE,

Chief Judge, United States District Court, Northern District of California.

[Endorsed] Filed September 30, 1957.

United States District Court
Northern District of California, Southern Division

MINUTE ORDER

At a Stated Term of the United States District Court for the Northern District of California, Southern Division, held at the Court Room thereof, in the City and County of San Francisco, on Monday, the 30th day of September, in the year of our Lord one thousand nine hundred and fifty-seven.

Present: the Honorable Michael J. Roche, District Judge.

[Title of Causes No. 20954-5-6.]

The parties hereto being present as heretofore, the further hearing of this matter was continued. Joseph Narracci, was sworn and testified on behalf of the Government. Exhibit No. B was marked for identification. The Government read into the record certain portion of the Wheeler deposition, the cross examinations in the depositions were waived. Thereupon the Government rested. The Petitioners' Motion to Dismiss the Government's claim was

Granted, the petitions of the seamen were Granted, and It Is Ordered that the effects and wages be given the seamen, and that the charge of desertion be and is hereby Set Aside. Counsel for the seamen to prepare orders accordingly. Further Ordered that the motion for stay of execution made by the United States, Claimant herein, be Denied.

I Hereby Certify that the foregoing is a full, true, and correct copy of an original order made and entered in the above-entitled.

Attest my hand and seal of said District Court, this.....day of....., A. D., 195...

[Seal] C. W. CALBREATH,
Clerk.

[Title of District Court and Cause No. 20954.]

NOTICE OF APPEAL

To: The Clerk of the Above Entitled Court.

To: James P. Staples.

Please Take Notice that the United States of America, petitioner and claimant in the above entitled action, does hereby appeal to the United States Court of Appeals for the Ninth Circuit from the Order of this Court made on September 30, 1957 dismissing the claim of the United States and from the order and decree of this Court made, entered and filed September 30, 1957 ordering that funds in the Registry be paid over to petitioner

James P. Staples and from each and every part of the said orders and decree.

LLOYD H. BURKE,
 United States Attorney,
 /s/ KEITH R. FERGUSON,
 Special Assistant to the Attorney
 General,
 /s/ JERRY W. MITCHELL,
 Attorney, Department of Justice,
 Proctors for Respondent United
 States of America.

Certificate of Mailing Attached.

[Endorsed]: Filed October 1, 1957.

[Title of District Court and Cause No. 20954.]

DESIGNATION OF CONTENTS OF
 RECORD ON APPEAL

Appellant hereby designates for inclusion in the record on appeal herein each and every part of the record herein, including the docket entries.

LLOYD H. BURKE,
 United States Attorney,
 /s/ KEITH R. FERGUSON,
 Special Assistant to the Attorney
 General,
 /s/ JERRY W. MITCHELL,
 Attorney, Department of Justice,
 Proctors for Respondent United
 States of America.

Certificate of Mailing Attached.

[Endorsed]: Filed October 1, 1957.

[Title of District Court and Cause No. 20954.]

DOCKET ENTRIES

1957

Aug. 20—U. S. Shipping Commr. Received 1641.20.

Sept. 4—Filed seaman's petition.

6—Filed claim of U. S. to funds.

—Filed answer of U. S.

—Filed notice of taking deposition.

10—Ord. con. Sept. 27 for hearing seaman's
petition. (Carter)

11—Filed notice of taking deposition.

—Filed mo. to consolidate with 20955.

12—Filed notice of taking deposition.

13—Filed order consolidating with 20955.

17—Ord. time shortened for motion for order
of examination.

—Filed affid. Jerry W. Mitchell.

—Filed notice of taking depos.

—Filed motion for order for examination.

19—Filed order for examination.

—Filed substitution of attys. Charles M.
Haid for Herbert Resner.

25—Filed depos. of Morris W. Mote.

—Filed depos. of Edward L. Wheeler.

26—Filed depos. of Jas. P. Staples.

27—Ord. assigned to Judge Roche for hear-
ing. (Carter)

—Hearing held, evidence introduced.

(Roche)

—Con. Sept. 30 for further hearing.

1957

Sept. 30—Hearing resumed, evid. introduced.

(Roche)

—Ord. petr.'s mo. to dis. the Gov't's claim granted, petitions of the seaman for wages granted, charge of desertion set aside. Mo. of U. S. for stay of execution denied.

—Filed and entered order granting seaman's petn.

—Filed Notice of Appeal (U. S.).

—Filed order staying execution. (Judge Healy)

Oct. 1—Filed notice of appeal (U. S.).

—Filed designation of contents of record on appeal.

[Title of District Court and Cause No. 20954.]

CERTIFICATE OF CLERK

I, C. W. Calbreath, Clerk of the United States District Court for the Northern District of California, do hereby certify that the foregoing and accompanying documents and exhibits, listed below, are the originals filed in this Court in the above-entitled case and that they constitute the record on appeal herein.

Account of Wages and Effects of Deserting Seamen.

Petition of James P. Staples for an Order Setting Aside the forfeiture of his wages, clothing and effects, etc.

Notice of taking deposition.

Answer of Respondent United States of America.
Claim of the United States to Funds in the Registry.

Notice of taking deposition.

Motion for Order of Consolidation.

Notice of taking deposition.

Order Consolidating causes.

Motion for Order for examination of Parties before trial.

Notice of taking deposition.

Order shortening time for hearing on Motion for an Order for examination of parties before trial.

Substitution of Attorneys.

Order for examination of Parties before trial.

Motion for Order of Consolidation.

Order Setting Aside the Forfeiture of Wages,
Clothing, etc.

Order Docketing cause and staying execution of
Final Order of District Court.

Notice of Appeal.

Notice of Appeal.

Designation of Contents of Record on Appeal.

Docket Entries.

Minute Order.

Deposition of James P. Staples.

Deposition of Edward B. Wheeler (Case No.
20954, 20955 and 20956).

Deposition of Morris W. Mote.

Deposition of Richard C. Cooper.

Respondent's exhibit A.

Respondent's exhibit B.

In Witness Whereof, I have hereunto set my
hand and affixed the seal of said District Court,
this 2nd day of October, 1957.

[Seal]

C. W. CALBREATH,
Clerk.

/s/ By J. P. WELSH,
Deputy Clerk.

In the United States District Court, Northern
District of California, Southern Division

In Admiralty No. 20955

IN THE MATTER OF THE WAGES OF BER-
NARD D. OSLIN

PETITION OF THE UNITED STATES

To the Honorable the Judges of the United States
District Court for the Northern District of
California, Southern Division, Sitting in Ad-
miralty:

The petition of the United States of America
pursuant to Admiralty Rule 42 for the sum of
\$1939.16 now on deposit in the Registry alleges as
follows:

I.

That on September 19, 1956, petitioner Bernard
D. Oslin signed on the USNS Escambia for a for-
eign voyage which began on September 19, 1956 at
Los Angeles, California and ended on August 16,
1957 at San Francisco, California.

II.

That on or about May 7, 1957, in the Port of
Sasebo, Japan, Bernard D. Oslin left the USNS
Escambia and remained away from the vessel and
did not join her during the remainder of her voy-
age, all without permission of the master.

III.

That the master of the USNS Escambia, on May

8, 1957, entered the desertion of Bernard D. Oslin in the official log book of the vessel; that pursuant to 46 U.S.C. Section 701, the wages then due to Bernard D. Oslin were forfeited for desertion, and that the said wages in the sum of \$1939.16 are now on deposit in the Registry of this Court in accordance with law.

Wherefore, petitioner United States of America prays this Honorable Court to decree that the wages of Bernard D. Oslin now on deposit in the Registry, are forfeited to the United States of America, and that the Clerk of this Court be directed to pay the wages so forfeited into the Treasury of the United States pursuant to law.

LLOYD H. BURKE,

United States Attorney,

/s/ KEITH R. FERGUSON,

Special Assistant to Attorney
General,

/s/ JERRY W. MITCHELL,

Attorney, Department of Justice,

Proctors for Petitioner, United
States of America.

Duly Verified.

[Endorsed]: Filed September 4, 1957.

[Title of District Court and Cause No. 20955.]

PETITION

The petition of Bernard D. Oslin, a seaman, under Admiralty Rule 42, for an order setting aside the forfeiture of his wages, clothing and effects, for desertion, respectfully shows:

1. I am a merchant seaman holding Coast Guard Mariner's Document Z-503798, and I have been going to sea for 10 years;

2. On or about Sept. 19, 1956, I signed on as a member of the crew of the Steamship Escambia;

3. The ship was operated by Joshua Hendy Corp.;

4. My duties on board were Deck Maintenance;

5. On May 8, 1957, at the Port of Sasebo, Japan, I left the ship with permission of the Chief Officer Wheeler for the purpose of shore leave;

6. I did leave my clothing and effects on board;

7. On May 8, 1957, the Master logged me as a deserter;

8. The reasons for my failure to rejoin the ship are as follows: Launch returning me to ship broke down. Towed back to shore. By the time I got another launch the ship had sailed.

9. My ship was put to \$ None expenses because of my failure to rejoin her.

10. There is now on deposit in the Registry of this Court the sum of \$1939.16, the amount of wages due me at the time I was logged as a deserter.

11. The United States Shipping Commissioner at the Port of San Francisco does have in his cus-

tody clothing and effects left by me aboard the said ship.

12. The address where any mail to me concerning this petition should be sent is: c/o H. Resner, 240 Stockton St., San Francisco.

13. I came back to the United States on the Steamship USNS Mission Loreto, arriving at the Port of New York on August 25, 1957.

14. I came: (1) With my passage provided under Consular requisition,

(2) With my passage paid by the American Consul of the port ofin the sum of \$.....

(3) As a work-a-way.....

(4) As a member of the ship's crew, in the capacity of A.B., being paid \$358 per month, plus overtime and allowances.

Wherefore, I respectfully request the Court to find that the Master erroneously entered me as a deserter, and that an order be made setting aside the forfeiture of my wages, clothing and effects, and directing the Clerk of this Court to pay me the above-mentioned wages due, and that the United States Shipping Commissioner be directed to deliver to me all of my clothing and effects now in his custody or control.

/s/ BERNARD D. OSLIN.

United States of America,
Northern District of California—ss.

Bernard D. Oslin, being first duly sworn, deposes and says: That he is the petitioner above named and that he has read the foregoing petition and

knows the contents thereof; and that all statements contained therein are true.

/s/ BERNARD D. OSLIN.

Subscribed and sworn to before me, this 10th day of September, 1957.

[Seal] /s/ J. P. WELSH,
Notary Public.

Acknowledgment of Service Attached.

[Endorsed]: Filed September 10, 1957.

[Title of District Court and Cause No. 20955.]

ANSWER OF RESPONDENT UNITED
STATES OF AMERICA

Comes now respondent United States of America pursuant to 46 U.S.C. 706 and Admiralty Rule 42 and in answer to the petition of Bernard D. Oslin, admits, denies and alleges as follows:

I.

Answering unto Article I, respondent admits the allegations thereof.

II.

Answering unto Article II, respondent admits that the petitioner signed on as a member of the crew of the USNS Escambia on or about September 19, 1956.

III.

Answering unto Article III, respondent alleges in this regard that the USNS Escambia was operated by the United States of America through its

operating agent Joshua Hendy Corporation; respondent denies each and every, all and singular, the remaining allegations thereof, not herein otherwise admitted or denied.

IV.

Answering unto Article IV, respondent admits the allegations thereof.

V.

Answering unto Article V, respondent alleges in this regard that petitioner left the USNS Escambia on May 7, 1957 at the Port of Sasebo, Japan; respondent alleges that it does not have knowledge or information sufficient to answer the allegations contained therein and upon that ground denies each and every, all and singular, the remaining allegations thereof, not herein otherwise admitted or denied.

VI.

Answering unto Article VI, respondent alleges that it does not have knowledge or information sufficient to answer the allegations contained therein and upon that ground denies each and every, all and singular, the allegations thereof but alleges in this regard that petitioner did leave some clothing and effects aboard the USNS Escambia.

VII.

Answering unto Article VII, respondent admits the allegations thereof.

VIII.

Answering unto Article VIII, respondent alleges

that it has no knowledge or information sufficient to answer the allegations contained therein and upon that ground denies each and every, all and singular, the allegations thereof.

IX.

Answering unto Article IX, respondent alleges that it does not have knowledge or information sufficient to answer the allegations contained therein and upon that ground denies each and every, all and singular, the allegations thereof, but alleges that the USNS Escambia was put to an expense of at least \$25.00 in this regard.

X.

Answering unto Article X, respondent admits the allegations thereof.

XI.

Answering unto Article XI, respondent admits the allegations thereof.

XII.

The allegations of Article XII require no answer.

XIII.

Answering unto Article XIII, respondent alleges that it has no knowledge or information sufficient to answer the allegations contained therein and upon that ground denies each and every, all and singular, the allegations thereof.

XIV.

Answering unto Article XIV, respondent alleges that it has no knowledge or information sufficient to answer the allegations contained therein and

upon that ground denies each and every, all and singular, the allegations thereof.

Wherefore respondent prays that this matter be set down for hearing at such time as will give each party sufficient time and notice to make the necessary preparation, take the necessary depositions, subpoena the necessary witnesses, discover the full facts and present the same to the Court; and that after such sufficient time and notice and after a full hearing, findings of fact pursuant to Admiralty Rule 46½ be made; and that the Petition of Bernard D. Oslin be dismissed and the above wages forfeited to the United States of America in accordance with law on the grounds that Petitioner deserted the USNS Escambia; and that the Clerk of this Court be directed to remit the said funds on deposit in the Registry to the Treasurer of the United States of America; and that the United States of America may have such other and further relief as to the Court may seem just and equitable.

LLOYD H. BURKE,

United States Attorney,

/s/ KEITH R. FERGUSON,

Special Assistant to the Attorney
General,

/s/ JERRY W. MITCHELL,

Attorney, Department of Justice,
Proctors for Respondent,

United States of America.

Duly Verified.

Affidavit of Mailing Attached.

[Endorsed]: Filed September 11, 1957.

[Title of District Court and Cause No. 20955.]

NOTICE OF TAKING DEPOSITION

To Bernard D. Oslin, Petitioner and Herbert Resner, Esq., his proctor:

You and Each of You Will Please Take Notice and you are hereby notified that the deposition of Bernard D. Oslin, pursuant to Admiralty Rule 13 of the District Court for the Northern District of California, will be taken on Monday, September 16, 1957 at the hour of 10:30 a.m. and from day to day thereafter until the examination is completed in the West Coast Office of the Admiralty and Shipping Section, Department of Justice, Room 447-A United States Post Office Building, 7th and Mission Streets, San Francisco, California, before a notary public or other officer authorized to administer oaths.

Dated: September 11, 1957.

LLOYD H. BURKE,

United States Attorney,

/s/ KEITH R. FERGUSON,

Special Assistant to the Attorney
General,

/s/ JERRY W. MITCHELL,

Attorney, Department of Justice,
Proctors for Respondent
United States of America.

Certificate of Mailing Attached.

[Endorsed]: Filed September 11, 1957.

[Title of District Court and Cause No. 20955.]

MOTION FOR ORDER FOR EXAMINATION
OF PARTIES BEFORE TRIAL

The Respondent, United States of America, by its proctors herein, moves the Court to enter an order instructing Bernard D. Oslin to be and appear at Room 447-A, United States Post Office Building, 7th and Mission Streets, San Francisco, California at the hour of 10:00 A.M., Friday, September 20, 1957 for the purpose of being examined before trial pursuant to Admiralty Rule 13 of this Court.

LLOYD H. BURKE,

United States Attorney,

/s/ KEITH R. FERGUSON,

Special Assistant to the Attorney
General,

/s/ JERRY W. MITCHELL,

Attorney, Department of Justice,
Proctors for Respondent.

* * * * *

Certificate of Mailing Attached.

[Endorsed]: Filed September 17, 1957.

In the United States District Court, Northern
District of California, Southern Division

In Admiralty—No. 20954

In the Matter of the Petition of James P. Staples
for an Order Setting Aside the Forfeiture of
His Wages, Clothing and Effects, for Deser-
tion

In Admiralty—No. 20955

In the Matter of the Petition of Bernard D. Oslin
for an Order Setting Aside the Forfeiture of
His Wages, Clothing and Effects, for Deser-
tion

AFFIDAVIT

Jerry W. Mitchell, being duly sworn, on oath,
deposes and says:

That he is an Attorney in the Department of
Justice and is familiar with the facts and proceed-
ings had herein and has handled both of these
claims since the petitions were filed.

A petition for an order setting aside the forfei-
ture of his wages, clothing and effects for deser-
tion was filed by James P. Staples on September 4, 1957
and by Bernard D. Oslin on September 10, 1957.
Prior to the filing of Bernard D. Oslin's petition,
the United States filed a Petition for the wages of
Oslin on deposit in the Registry of this Court on
September 4, 1957.

Subsequent pleadings were filed and the two
causes set for trial on September 27, 1957. On Sep-
tember 11, 1957, a Notice of Taking Deposition of

petitioners James P. Staples and Bernard D. Oslin was served upon their proctor Herbert Resner, Esq. This notice set the time of taking the depositions for 10:00 A.M. in the Staples case and 10:30 A.M. in the Oslin case on Monday, September 16, 1957. A letter (a copy of which is attached to this affidavit) requesting Mr. Resner to produce each of his clients at the appointed hours accompanied the notices when mailed.

At 10:00 A.M. on September 16, 1957, Mr. Resner and his clients failed to appear at the appointed place. A telephone call was then made to him inquiring of his intentions regarding the depositions. His immediate answer was that he thought the depositions were set for tomorrow (Tuesday) morning. While on the telephone he read his copies of the notice and agreed they had been for Monday. He said he had received the notice Friday morning but had not looked at them well enough to realize the date. At that time I suggested setting the depositions for Tuesday morning, September 17, 1957 at the same times. He refused claiming inability to contact his clients except by mail. He further stated they were scheduled to see him on Wednesday afternoon. At this time he suggested the taking of the depositions be set for Friday afternoon, September 20, 1957. When asked if he would guarantee production of his clients, Friday afternoon, September 20, 1957, he said he would not. He was then asked the addresses of his clients and gave Oslin's but refused to give that of Staples. He then suggested the United States should attempt to obtain the

presence of the parties for deposition purposes as he didn't like the attitude of the United States.

The discovery depositions of the parties in these causes are essential to the proper preparation of the case for the United States and for it to know what it must meet on trial. The United States cannot safely proceed to trial without discovery in this matter.

Wherefore it is respectfully requested that the relief set forth in the notice of motion be granted.

/s/ JERRY W. MITCHELL,

Attorney, Department of Justice.

Subscribed and sworn to before me this 17th day of September 1957.

[Seal] /s/ J. P. WELSH,

Clerk, United States District Court, Northern District of California.

KRF:JWM September 11, 1957 ol

Herbert Resner, Esq.

240 Stockton Street

San Francisco, California

Re: USNS Escambia. Wages of Alleged Deserting Seaman James P. Staples—May 5, 1957. N. D. California—Admiralty No. 20954.

USNS Escambia. Wages of Alleged Deserting Seaman Bernard D. Oslin—May 7, 1957. N. D. California—Admiralty No. 20955.

Dear Sir:

Enclosed are copies of Notice of Taking Deposition in each of the above causes.

We request that you produce each of your clients in the above causes at the appointed hours and we expect that you will do so.

Very truly yours,

Keith R. Ferguson,
Attorney in Charge.

cc:

Chief, Adm. & Ship. Sec. Wash. D. C.

[Endorsed]: Filed September 17, 1957.

[Title of District Court and Causes Nos. 20954-5.]

ORDER FOR EXAMINATION OF PARTIES
BEFORE TRIAL

It Is Hereby Ordered that Respondent United States of America motion for Order for Examination of Parties Before Trial be, and it is granted, that James P. Staples and Bernard D. Oslin be and appear at Room 447-A Post Office Building, 7th and Mission Streets, San Francisco, California on Friday, September 20, 1957 at 10:00 A.M. and at that time testify in answer to questions propounded by counsel before a notary public or other officer authorized to administer oaths.

Dated: September 19, 1957.

/s/ OLIVER J. CARTER,
United States District Judge.

[Endorsed]: Filed September 19, 1957.

[Title of District Court and Cause No. 20955.]

MOTION FOR JUDGMENT BY DEFAULT OR
OTHER APPROPRIATE RELIEF

The Respondent United States of America, by its proctors herein, moves the Court to enter a judgment by default against petitioner, Bernard D. Oslin, or dismiss the Petition of Bernard D. Oslin, with prejudice, or strike the Petition of Bernard D. Oslin, for cause as shown by the record and the attached affidavit and pursuant to Rule 32 e(d) of The Supreme Court Admiralty Rules.

LLOYD H. BURKE,

United States Attorney,

/s/ KEITH R. FERGUSON,

Special Assistant to the Attorney
General,

/s/ JERRY W. MITCHELL,

Attorney, Department of Justice,

Proctors for Petitioner and Respondent United
States of America.

* * * * *

Certificate of Mailing Attached.

[Endorsed]: Filed September 24, 1957.

[Title of District Court and Cause No. 20955.]

AFFIDAVIT

Jerry W. Mitchell, being duly sworn, on oath, deposes and says:

That he is an Attorney in the Department of Jus-

tice and is familiar with the facts and proceedings had herein and has handled this claim since the petition was filed.

Pursuant to a Motion by the United States of America for an Order for Examination of Parties Before Trial and an Affidavit attached thereto and after a hearing on said motion this Court granted the Order on September 19, 1957. Herbert Resner, Esq. proctor for Petitioner, was present in Court at the hearing on the Order and did personally agree to the form of the Order.

The order, as signed by the Court, was for the appearance of Bernard D. Oslin in Room 447-A Post Office Building, 7th and Mission Streets, San Francisco, California on Friday, September 20, 1957 at 10:00 A.M.

At approximately 9:50 A.M. on September 20, 1957, Mr. Resner called and stated that he had been unable to reach Bernard D. Oslin and therefore would not produce him for examination on that date. At this time Mr. Resner suggested that he would bring Oslin in Monday afternoon, September 23, 1957 for the deposition. I advised Mr. Resner that I would be available for taking the deposition Monday afternoon but that the United States of America did not and would not waive the Court Order which we had obtained. Mr. Resner stated he did not understand and I again stated my availability for taking the deposition on Monday and reiterated that we were not waiving the Court Order.

On Monday, September 23, 1957, Mr. Resner and Mr. Oslin failed to appear for the deposition. No

communication was had with Mr. Resner on that date.

The discovery deposition of Oslin is essential to the proper preparation of the case for the United States of America and for it to know what it must meet on trial. The United States of America cannot safely proceed to trial without discovery in this matter.

Wherefore it is respectfully requested that the relief set forth in the notice of motion be granted.

/s/ JERRY W. MITCHELL,

Attorney, Department of Justice.

Subscribed and sworn to before me this 24th day of September, 1957.

[Seal] /s/ J. P. WELSH,

Deputy Clerk, U. S. District Court, Northern District of California.

[Endorsed]: Filed September 24, 1957.

United States District Court, Northern District
of California, Southern Division

No. 20955

IN THE MATTER OF THE PETITION OF
BERNARD D. OSLIN, SEAMAN, FOR AN
ORDER SETTING ASIDE THE FORFEI-
TURE OF HIS WAGES, CLOTHING AND
EFFECTS, FOR DESERTION

ORDER

Upon consideration of the verified petition on file

herein, and after hearing and good cause being shown therefor, and it appearing to the Court that the Master erroneously entered petitioner in the log as a deserter; and that in the light of additional evidence adduced at the hearing \$1939.16 of his wages, clothing and effects should be returned to him; and that none of his wages should be forfeited to the United States, and that the operator of the vessel is entitled to none of petitioner's wages for expenses incurred;

It Is Hereby Ordered that the Clerk of this Court draw a check in favor of Bernard D. Oslin in the sum of \$1935.01, and a check in favor of C. W. Calbreath, Clerk, in the sum of \$1.15, Clerk's fees, and

It Is Further Ordered that the United States Shipping Commissioner for the Port of San Francisco deliver to petitioner all his clothing and effects which may be in the said Shipping Commissioner's custody or control, upon taking receipt therefor.

Dated: September 30, 1957.

/s/ MICHAEL J. ROCHE,

Chief Judge, United States District Court, Northern District of California.

[Endorsed]: Filed September 30, 1957.

[Title of District Court and Cause No. 20955.]

NOTICE OF APPEAL

To: The Clerk of the Above Entitled Court. To:
Bernard D. Oslin:

Please Take Notice that the United States of America, petitioner and claimant in the above entitled action, does hereby appeal to the United States Court of Appeals for the Ninth Circuit from the Order of this Court made on September 30, 1957 dismissing the petition of the United States and from the order and decree of this Court made, entered and filed September 30, 1957 ordering that funds in the Registry be paid over to petitioner Bernard D. Oslin and from each and every part of the said orders and decree.

LLOYD H. BURKE,
United States Attorney,

/s/ KEITH R. FERGUSON,
Special Assistant to the Attorney
General,

/s/ JERRY W. MITCHELL,
Attorney, Department of Justice,
Proctors for Respondent
United States of America.

Certificate of Mailing Attached.

[Endorsed]: Filed October 1, 1957.

[Title of District Court and Cause No. 20955.]

DESIGNATION OF CONTENTS OF RECORD
ON APPEAL

Appellant hereby designates for inclusion in the record on appeal herein each and every part of the record herein, including the docket entries.

LLOYD H. BURKE,
United States Attorney,

/s/ KEITH R. FERGUSON,
Special Assistant to the Attorney
General,

/s/ JERRY W. MITCHELL,
Attorney, Department of Justice,
Proctors for Respondent
United States of America.

Certificate of Mailing Attached.

[Endorsed]: Filed October 1, 1957.

[Title of District Court and Cause No. 20955.]

DOCKET ENTRIES

1957

Aug. 20—U.S. Shipping Commr. Received \$1939.16.

Sep. 4—Filed Petn. of U. S. for wages.

5—Ord. process issue. (Carter)

—Filed order to issue Citation.

10—Filed Seaman's petition.

11—Filed citation executed.

—Filed motion for consolidation with 20954.

1957

- Sept 11—Filed notice of taking deposition.
—Filed answer of U. S.
- 12—Filed notice of taking deposition.
- 13—Ord. consolidated with 20954 con. Sept. 27
for hearing seaman's petition.
- 17—Filed motion for order for examination.
—Filed notice of taking deposition.
- 24—Filed depos. Edward L. Wheeler.
—Filed log book.
—Filed affid. Jerry W. Mitchell.
—Filed U. S. mo. for Judgt. of default.
- 26—Filed depos. of Rich. C. Cooper.
- 27—Ord. assigned to Judge Roche for hearing.
(Carter)
—Hearing held, evidence introduced.
(Roche)
—Con. Sept. 30 for further hearing.
- 30—Hearing resumed, evid, introduced.
(Roche)
—Ord. Petrs. mo. to dis. the Gov'ts. claim
granted, petitions of the seaman for
wages granted, charge of desertion set
aside, Mo. of U. S. for stay of execution
denied.
—Filed and entered order granting sea-
man's petition.
—Filed Notice of appeal (U. S.).
—Filed order staying execution. (Judge
Healy)
- Oct. 1—Filed notice of appeal. (U. S.)
—Filed designation of contents of record
on appeal.

[Title of District Court and Cause No. 20955.]

CERTIFICATE OF CLERK

I, C. W. Calbreath, Clerk of the United States District Court for the Northern District of California, do hereby certify that the foregoing and accompanying documents and exhibits, listed below, are the originals filed in this Court in the above-entitled case and that they constitute the record on appeal herein.

Account of Wages and Effects of Deserting Seamen.

Petition of the United States.

Order for Issuance of Citation.

Petition for an Order Setting Aside the Forfeiture of his wages, clothing, and effects, for desertion.

Citation in Admiralty with executed return thereon.

Motion for Order of Consolidation.

Notice of Taking Deposition.

Answer of Respondent United States of America.

Notice of Taking Deposition.

Affidavit of Jerry W. Mitchell.

Motion for Order for Examination of Parties before trial.

Notice of Taking Deposition.

Motion for Judgment by Default or other appropriate relief.

Affidavit of Jerry W. Mitchell.

Order Setting Aside the Forfeiture of Wages, Clothing, and Effects, for desertion.

Notice of Appeal.

Notice of Appeal.

Designation of Contents of Record on Appeal.

Docket Entries.

Minute Order.

In Witness Whereof, I have hereunto set my hand and affixed the seal of said District Court, this 2nd day of October, 1957.

[Seal]: C. W. CALBREATH,
 Clerk,

/s/ By J. P. WELSH,
 Deputy Clerk.

In the United States District Court, Northern
District of California, Southern Division

In Admiralty—No. 20956

IN THE MATTER OF THE WAGES OF RICH-
ARD C. COOPER

PETITION OF THE UNITED STATES

To the Honorable the Judges of the United States
District Court for the Northern District of
California, Southern Division, Sitting in Ad-
miralty:

The petition of the United States of America
pursuant to Admiralty Rule 42 for the sum of
\$1800.57 now on deposit in the Registry alleges as
follows:

I.

That on September 19, 1956, petitioner Richard
C. Cooper signed on the USNS Escambia for a for-
eign voyage which began on September 19, 1956 at
Los Angeles, California and ended on August 16,
1957 at San Francisco, California.

II.

That on or about May 7, 1957, in the Port of
Sasebo, Japan, Richard C. Cooper left the USNS
Escambia and remained away from the vessel and
did not join her during the remainder of her voy-
age, all without the permission of the master.

III.

That the master of the USNS Escambia, on May

8, 1957, entered the desertion of Richard C. Cooper in the official log book of the vessel; that pursuant to 46 U.S.C. Section 701, the wages then due to Richard C. Cooper were forfeited for desertion, and that the said wages in the sum of \$1800.57 are now on deposit in the Registry of this Court in accordance with law.

Wherefore, petitioner United States of America prays this Honorable Court to decree that the wages of Richard C. Cooper now on deposit in the Registry, are forfeited to the United States of America, and that the Clerk of this Court be directed to pay the wages so forfeited into the Treasury of the United States pursuant to law.

LLOYD H. BURKE,

United States Attorney,

/s/ KEITH R. FERGUSON,

Special Assistant to Attorney
General,

/s/ JERRY W. MITCHELL,

Attorney, Department of Justice,

Proctors for Petitioner,

United States of America.

Duly Verified.

[Endorsed]: Filed September 4, 1957.

[Title of District Court and Cause No. 20956.]

PETITION

The petition of Richard C. Cooper, a seaman, under Admiralty Rule 42, for an order setting aside

the forfeiture of his wages, clothing and effects, for desertion, respectfully shows:

1. I am a merchant seaman holding Coast Guard Mariner's Document Z-5229D-1, and I have been going to sea for 16 years;

2. On or about September 19, 1956, I signed on as a member of the crew of the Steamship USNS Esecambia;

3. The ship was operated by Joshua Hendy;

4. My duties on board were A.B.

5. On May 7, 1957, at the Port of Sasebo, Japan, I left the ship with permission of the Master for the purpose of shore leave;

6. I did leave my clothing and effects on board;

7. On May 8, 1957, the Master logged me as a deserter;

8. The reasons for my failure to rejoin the ship are as follows: On May 8, 1957, with two other seamen also on shore leave, we hired a launch to return us to the vessel. While en route the launch broke down and had to be towed back to the pier where we had engaged the launch. Before we could secure other transportation our vessel sailed.

9. My ship was put to \$0. expenses because of my failure to rejoin her.

10. There is now on deposit in the Registry of this Court the sum of \$1800.57, the amount of wages due me at the time I was logged as a deserter.

11. The United States Shipping Commissioner at the Port of San Francisco does have in his custody clothing and effects left by me aboard the said ship.

12. The address where any mail to me concerning this petition should be sent is: c/o Roos, Jennings & Haid, 1100 Mills Tower, San Francisco, California.

13. I came back to the United States on the Steamship Mongolian Mariner, arriving at the Port of San Francisco on June 30, 1957.

14. I came: (1) With my passage provided under Consular requisition,

(2) With my passage paid by the American Consul of the port of.....in the sum of \$.....

(3) As a work-a-way.....

(4) As a member of the ship's crew, in the capacity of A.B., being paid \$453.00 per month, plus overtime and allowances.

Wherefore, I respectfully request the Court to find that the Master erroneously entered me as a deserter, and that an order be made setting aside the forfeiture of my wages, clothing and effects, and directing the Clerk of this Court to pay me the above-mentioned wages due, and that the United States Shipping Commissioner be directed to deliver to me all of my clothing and effects now in his custody or control.

/s/ RICHARD C. COOPER.

United States of America,
Northern District of California—ss.

Richard C. Cooper, being first duly sworn, deposes and says: That he is the petitioner above named and that he has read the foregoing petition

and knows the contents thereof; and that all statements contained therein are true.

/s/ RICHARD C. COOPER.

Subscribed and sworn to before me, this 17th day of September, 1957.

[Seal] /s/ MABEL M. HULL,

Notary Public in and for the City and County of San Francisco, State of California. My Commission Expires July 23, 1960.

Acknowledgment of Service Attached.

[Endorsed]: Filed September 19, 1957.

[Title of District Court and Cause No. 20956.]

ANSWER OF RESPONDENT UNITED
STATES OF AMERICA

Comes now respondent United States of America pursuant to 46 U.S.C. 706 and Admiralty Rule 42 and in answer to the petition of Richard C. Cooper, admits, denies and alleges as follows:

I.

Answering unto Article I, respondent admits the allegations thereof.

II.

Answering unto Article II, respondent admits that the petitioner signed on as a member of the crew of the USNS Esecambia on or about September 19, 1956.

III.

Answering unto Article III, respondent alleges

in this regard that the USNS Escambia was operated by the United States of America through its operating agent Joshua Hendy Corporation; respondent denies each and every, all and singular, the remaining allegations thereof, not herein otherwise admitted or denied.

IV.

Answering unto Article IV, respondent admits the allegations thereof.

V.

Answering unto Article V, respondent alleges in this regard that petitioner left the USNS Escambia on May 7, 1957 at the Port of Sasebo, Japan; respondent alleges that it does not have knowledge or information sufficient to answer the allegations contained therein and upon that ground denies each and every, all and singular, the remaining allegations thereof, not herein otherwise admitted or denied.

VI.

Answering unto Article VI, respondent alleges that it does not have knowledge or information sufficient to answer the allegations contained therein and upon that ground denies each and every, all and singular, the allegations thereof but alleges in this regard that petitioner did leave some clothing and effects aboard the USNS Escambia.

VII.

Answering unto Article VII, respondent admits the allegations thereof.

VIII.

Answering unto Article VIII, respondent alleges that it has no knowledge or information sufficient to answer the allegations contained therein and upon that ground denies each and every, all and singular, the allegations thereof.

IX.

Answering unto Article IX, respondent alleges that it does not have knowledge or information sufficient to answer the allegations contained therein and upon that ground denies each and every, all and singular, the allegations thereof, but alleges that the USNS Escambia was put to an expense of at least \$56.44 in this regard.

X.

Answering unto Article X, respondent admits the allegations thereof.

XI.

Answering unto Article XI, respondent admits the allegations thereof.

XII.

The allegations of Article XII require no answer.

XIII.

Answering unto Article XIII, respondent alleges that it has no knowledge or information sufficient to answer the allegations contained therein and upon that ground, denies each and every, all and singular, the allegations thereof.

XIV.

Answering unto Article XIV, respondent alleges

that it has no knowledge or information sufficient to answer the allegations contained therein and upon that ground denies, each and every, all and singular, the allegations thereof.

Wherefore respondent prays that this matter be set down for hearing at such time as will give each party sufficient time and notice to make the necessary preparation, take the necessary depositions, subpoena the necessary witnesses, discover the full facts and present the same to the Court; and that after such sufficient time and notice and after a full hearing, findings of fact pursuant to Admiralty Rule 46 $\frac{1}{2}$ be made; and that the Petition of Richard C. Cooper be dismissed and the above wages forfeited to the United States of America in accordance with law on the grounds that Petitioner deserted the USNS Escambia; and that the Clerk of this Court be directed to remit the said funds on deposit in the Registry to the Treasurer of the United States of America; and that the United States of America may have such other and further relief as to the Court may seem just and equitable.

LLOYD H. BURKE,

United States Attorney,

/s/ KEITH R. FERGUSON,

Special Assistant to the Attorney
General,

/s/ JERRY W. MITCHELL,

Attorney, Department of Justice,
Proctors for Respondent

United States of America.

Certificate of Mailing Attached.

[Endorsed]: Filed September 20, 1957.

United States District Court, Northern District
of California, Southern Division

No. 20956

IN THE MATTER OF THE PETITION OF
RICHARD C. COOPER, SEAMAN, FOR
AN ORDER SETTING ASIDE THE FOR-
FEITURE OF HIS WAGES, CLOTHING
AND EFFECTS, FOR DESERTION

ORDER

Upon consideration of the verified petition on file herein, and after hearing and good cause being shown therefor, and it appearing to the Court that the Master erroneously entered petitioner in the log as a deserter; and that in the light of additional evidence adduced at the hearing \$1800.57 of his wages, his clothing and effects should be returned to him; and that none of his wages should be forfeited to the United States, and that the operator of the vessel is entitled to none of petitioner's wages for expenses incurred;

It Is Hereby Ordered that the Clerk of this Court draw a check in favor of Richard C. Cooper in the sum of \$1799.42, and a check in favor of C. W. Calbreath, Clerk, in the sum of \$1.15, Clerk's fees, and

It Is Further Ordered that the United States Shipping Commissioner for the Port of San Francisco deliver to petitioner all his clothing and effects which may be in the said Shipping Commis-

sioner's custody or control, upon taking receipt therefor.

Dated: September 30, 1957.

/s/ MICHAEL J. ROCHE,
Chief Judge, United States District Court, North-
ern District of California.

[Endorsed]: Filed September 30, 1957.

[Title of District Court and Cause No. 20956.]

NOTICE OF APPEAL

To: The Clerk of the Above Entitled Court:

To: Richard C. Cooper:

Please Take Notice that the United States of America, petitioner and claimant in the above entitled action, does hereby appeal to the United States Court of Appeals for the Ninth Circuit from the Order of this Court made on September 30, 1957 dismissing the petition of the United States and from the order and decree of this Court made, entered and filed on September 30, 1957 ordering that funds in the Registry be paid over to petitioner Richard C. Cooper and from each and every part of the said orders and decree.

LLOYD H. BURKE,
United States Attorney,

/s/ KEITH R. FERGUSON,
Special Assistant to the Attorney
General,

/s/ JERRY W. MITCHELL,
Attorney, Department of Justice,
Proctors for Respondent
United States of America.

Certificate of Mailing Attached.

[Endorsed]: Filed October 1, 1957.

[Title of District Court and Cause No. 20956.]

DESIGNATION OF CONTENTS OF RECORD
ON APPEAL

Appellant hereby designates for inclusion in the record on appeal herein each and every part of the record herein, including the docket entries.

LLOYD H. BURKE,
United States Attorney,

/s/ KEITH R. FERGUSON,
Special Assistant to the Attorney
General,

/s/ JERRY W. MITCHELL,
Attorney, Department of Justice,
Proctors for Appellant
United States of America.

Certificate of Mailing Attached.

[Endorsed]: Filed October 1, 1957.

[Title of District Court and Cause No. 20956.]

DOCKET ENTRIES

1957

Aug. 20—U. S. Shipping Commr. received \$1800.57.

Sep. 4—Filed petn. of U. S. for wages.

5—Ord. process issue.

—Filed order to issue Citation.

—Issued Citation.

9—Filed Citation unexecuted.

19—Filed seaman's petition.

20—Filed answer of U. S.

24—Filed depos. Edward L. Wheeler.

27—Filed order consolidated with 20954-20955.

—Ord. assigned to Judge Roche for hearing.
(Carter)—Hearing held, evidence introduced, con.
Sept. 30 for further hearing. (Roche)30—Hearing resumed, evid. introduced.
(Roche)—Ord. petrs. mo. to dis. the Gov'ts. claim
granted, petitions of the seaman for wages
granted, charge of desertion set aside, Mo.
of U. S. for stay of execution denied.—Filed and entered Order granting sea-
man's petition.

—Filed Notice of Appeal (U. S.).

—Filed order staying execution. (Judge
Healy)

Oct. 1—Filed notice of appeal (U. S.).

—Filed designation of contents of record on
appeal.

Wristwatch in safe.

[Title of District Court and Cause No. 20956.]

CERTIFICATE OF CLERK

I, C. W. Calbreath, Clerk of the United States District Court for the Northern District of California, do hereby certify that the foregoing and accompanying documents and exhibits, listed below, are the originals filed in this Court in the above-entitled case and that they constitute the record on appeal herein.

Account of Wages and Effects of Deserting Seamen.

Petition of Richard C. Cooper for an Order setting Aside the Forfeiture of his wages, Clothing and effects, for Desertion.

Answer of Respondent United States of America.

Citation in Admiralty with Marshal's Return Executed thereon.

Order for Issuance of Citation.

Petition of the United States.

Order Setting Aside the Forfeiture of Wages, Clothing and effects, for Desertion.

Notice of Appeal.

Notice of Appeal.

Designation of Contents of Record on Appeal.

Docket Entries.

Minute Order.

In Witness Whereof, I have hereunto set my

hand and affixed the seal of said District Court,
this 2nd day of October, 1957.

[Seal] C. W. CALBREATH,
 Clerk,

/s/ By J. P. WELSH,
 Deputy Clerk.

In the District Court of the United States, North-
ern District of California, Southern Division

In Admiralty—No. 20,954

IN THE MATTER OF THE PETITION OF
JAMES P. STAPLES.

No. 20,955

IN THE MATTER OF THE PETITION OF
BERNARD D. OSLIN.

No. 20,956

IN THE MATTER OF THE PETITION OF
RICHARD C. COOPER.

TRANSCRIPT OF PROCEEDINGS

Before: Hon. Michael J. Roche, Judge.

Appearances: For Petitioners Staples and Cooper: Charles M. Haid, Jr., Esquire; For Petitioner Oslin: Herbert Resner, Esquire; For Respondent: Lloyd H. Burke, United States Attorney, Keith R. Ferguson, Special Assistant to the Attorney Gen-

eral, by Jerry W. Mitchell and John F. Meadows, Attorneys, Department of Justice. [1]*

* * * * *

(The following proceedings were had on the trial before Judge Michael J. Roche.)

Friday, September 27, 1957

The Clerk: In the matter of Richard C. Cooper, James P. Staples and Bernard D. Oslin, Petition for an order setting aside forfeiture of wages, clothing, etc.

Mr. Resner: Ready.

Mr. Mitchell: Ready.

Mr. Haid: Ready.

The Clerk: Will counsel state their appearances for the record, please.

Mr. Resner: Herbert Resner, for the petitioner Oslin.

Mr. Haid: Charles Haid, Jr., for petitioners Staples and Cooper.

Mr. Mitchell: Jerry W. Mitchell for the respondent United States.

The Court: In the interest of time—there has been no pretrial in this case, I take it?

Mr. Resner: No.

The Court: It may be that we can simplify the issues. Is there any way that we can do that under the conditions existing, gentlemen?

Mr. Haid: By stipulation concerning their employment.

* Page numbers appearing at top of page of Reporter's Original Transcript of Record.

The Court: Is there any necessity for amending the pleadings? None?

And the possibility of admissions of fact documents which will avoid unnecessary delay? By your silence I see that you are [23] not interested.

There are no expert witnesses to be called, are there?

Is there anything else that you have in mind that will aid us in getting proper results in this case?

Mr. Mitchell: At this time, your Honor, the United States would like to present a motion for consolidation of Richard C. Cooper's case, Admiralty No. 20,956. That has not been consolidated with the other two, although Judge Carter did consolidate 20,954 and 20,955.

The Court: No objections, gentlemen?

Mr. Haid: No, sir.

Mr. Resner: No, your Honor.

The Court: So ordered.

Mr. Mitchell: Your Honor, at this time the United States would like to make a motion for a default judgment in the case of Bernard C. Oslin, Admiralty No. 20,955.

The Court: Was he served, do you know?

Mr. Mitchell: Yes, your Honor.

The Court: The record discloses that he was served?

Mr. Resner: I assume that is directed to me, your Honor?

The Court: What is it?

Mr. Resner: I assume this is directed to me. I represent Mr. Oslin. And I hold in my hand three

copies of a paper which is called a "Motion for Judgment by Default or Other Appropriate Relief." The motion states that there is an affidavit [24] attached, but no affidavit has been served upon me. I have been served with three copies of the same paper called the motion but nothing else. And until I see the affidavit of course I have nothing to reply to. I don't know how this came to pass, but the Government failed to serve me with the proper or sufficient papers.

Mr. Mitchell: An affidavit was mailed to him at the same time as the other papers were mailed.

Mr. Resner: On the contrary, it was not, your Honor. These were the only three documents that appeared in the envelope that was sent to me. I can hand it up to the court to show you that they are copies of the same paper.

The Court: Have you a copy of that here?

Mr. Mitchell: Yes, sir.

The Court: Serve counsel with it now.

(The paper was handed to counsel.)

Mr. Resner: May I have a minute to look at it, Judge?

The Court: Certainly.

Mr. Resner: I have read this. Now may I make a statement?

The Court: You may.

Mr. Resner: This is directed to the deposition of the petitioner Oslin, but I would say on September 19th, I believe it was, we were in Judge Carter's court and the Government filed a motion for an order to take Oslin's deposition on Friday of that

week and Judge Carter granted the motion. I told Judge [25] Carter at the time that my client was in Oakland and had no phone and that it was difficult for me to communicate with him, and that if I could produce him I would bring him. I had no objection. I neither heard from Oslin nor could I get in touch with him, so when Friday came I couldn't produce him for the deposition, and I so advised Mr. Mitchell.

As your Honor knows, on Monday I started a trial here and it continued all week until yesterday. On Tuesday at the lunch period I called Mr. Mitchell and told him that I had heard from Oslin and I could produce him that afternoon after court was concluded here at 4:00 o'clock, and I would be happy to bring him upstairs to Mr. Mitchell's office and let him take his deposition. Mr. Mitchell said that they didn't want the deposition because it was too late for discovery at that point on Tuesday of this week and that therefore he was going to resort to what relief he thought was appropriate in the matter. They not wanting to take Mr. Oslin's deposition on Tuesday, there was nothing further that I could do.

Their motion for default is predicated upon the proposition that Mr. Oslin was not available on Friday; but if your Honor cares to verify it with Judge Carter, you will find that he said at the time that if I could produce him I should, but, obviously, I could not be required to make a guarantee to produce the witness. And that is what it is all about. After Tuesday, the burden is upon the Government

for failing to take [26] Oslin's deposition. I have always been willing to cooperate with them, but they have taken a very, shall I say, intransigent position in this case, your Honor.

Mr. Mitchell: On the contrary, your Honor, as I stated in my affidavit, he contacted us Friday at the commencement of the deposition——

The Court: I had him in here all week and kept him busy.

Mr. Mitchell: Yes, your Honor, but this is a week ago.

The Court: Every hour of the week too.

Mr. Mitchell: At that time a deposition had been set previous to this and he did not appear at that time, by notice. Following the noticed deposition and failure to appear, the Government appeared and asked for an order. He did not appear at the time of the order but shortly before the time the ordered deposition he called me and stated that he would bring Mr. Oslin in on Monday, which was the day he started the trial in here, I understand. At that time he didn't mention the trial; he said he would bring him in for deposition. At the time I stated that I would be available for the deposition but I didn't waive the Court order. He did not appear. And as he said, he did call me Tuesday and offered the deposition for Wednesday noon, which we felt was too late for our purposes of discovery.

The Court: Is he here now?

Mr. Resner: Yes, he is here, your Honor, sure; he has been available all week. I have not refused to give them the [27] deposition, but apparently

the Government takes the position, your Honor, that when they blow the whistle we are supposed to run. After all the convenience of all parties has to be served.

The Court: Is the matter submitted, gentlemen?

Mr. Resner: Yes.

The Court: The motion will be denied. Let us proceed.

Mr. Mitchell: Call Mr. Johnson to the stand please.

FRANK A. JOHNSON

called as a witness on behalf of the respondent, being first duly sworn, testified as follows:

Q. (By the Court): What is your full name, please? A. Frank A. Johnson.

Q. Where do you live, Mr. Johnson?

A. In Alameda, sir; 2065 Buena Vista, Alameda.

Q. And your business or occupation?

A. I am United States Coast Guard Shipping Commissioner.

Q. United States Coast Guard?

A. Yes, sir.

Q. Shipping Commissioner. How long have you been so engaged?

A. As the Shipping Commissioner?

Q. Yes.

A. One year as Shipping Commissioner.

Q. Prior to that time?

A. Coast Guard 20 years, Coast Guard.

Q. In what capacity? [28]

A. In various capacities; Chief Boatswain's Mate at present.

(Testimony of Frank A. Johnson.)

Q. And located where, on this coast, during that time?

A. Also the past seven years on this coast.

The Court: Take the witness.

Direct Examination

Q. (By Mr. Mitchell): In your occupation as Shipping Commissioner do you have custody of those records—of any shipping articles.

A. We do.

Q. Do you have with you at this time the articles for the U.S.N.S. Escambia? A. Yes, sir.

Q. For the voyage starting September, 1956 and starting August, 1957?

A. Right, sir.

Q. Would you look at those articles and read for the Court whether or not the three petitioners, James P. Staples, Bernard D. Oslin and Richard C. Cooper are included on those?

A. They are. Which one would you like first?

Q. The articles, please. As to James P. Staples, in what capacity did he serve?

A. Staples? Staples was a pump man.

Q. What date did he sign aboard?

A. Staples signed on on the 19th of September, 1956.

Q. Did he sign before the Shipping Commissioner? A. He sure did, sir. [29]

Q. As to Mr. Bernard D. Oslin, is he on those articles? A. Mr. Oslin was——

(Testimony of Frank A. Johnson.)

Q. In what capacity?

A. Mr. Bernard Oslin, he was on there as deck maintenance.

The Court: Deck maintenance?

A. Deck maintenance.

Q. (By Mr. Mitchell): What date did he sign aboard?

A. He signed on on the 19th of September, 1956.

Q. Before a Shipping Commissioner?

A. Before a Shipping Commissioner, yes.

Q. And as to Mr. Richard C. Cooper, in what capacity did he serve?

A. Richard Cooper was an a.b. and he signed on on the 19th of September, 1956.

Q. Before a Shipping Commissioner?

A. Before a Shipping Commissioner.

Q. Would you read the front of those articles and state for what length of time they were made?

A. Yes, sir; these articles were made for 12 months.

Q. For 12 months? A. 12 months.

Q. And what type of voyage?

A. The voyage was from Los Angeles, California to a point in the Pacific ocean to the westward of Los Angeles, California, thence to or as may be ordered or directed by the U. S. Government [30] or any department, commissioner, or agency therefor.

Q. Thank you. Do you have the official log book of the U.S.N.S. Escambia?

A. Yes, sir, I do.

(Testimony of Frank A. Johnson.)

Mr. Resner: Are the articles being offered in evidence, your Honor?

Mr. Mitchell: Yes, they are, your Honor.

The Court: What is it?

Mr. Mitchell: We offer the articles in evidence.

The Court: Let them be admitted and marked.

The Clerk: Respondent's Exhibit A admitted and filed in evidence.

(The document referred to was thereupon received in evidence and marked Respondent's Exhibit A.)

Q. (By Mr. Mitchell): Can you identify the books you have in your hand?

A. Yes, sir, the official logs of the *Escambia*.

Q. For what voyage?

A. This particular voyage was 1.

Q. What period did it cover?

A. It was from September 19—I'll make sure of that—the 19th of September, 1956 and voyage terminated at San Francisco on the 8/15/57.

Mr. Mitchell: At this time we would offer the official log books in evidence, your Honor as respondent's next in order. [31]

Mr. Haid: At this time I would like to object to the introduction of any purported log book of the *Escambia* as a respondent's exhibit or in any other fashion. There has been no showing here under the statute, 28 United States Code Section 1732, that this is the log book of the *Escambia* by anyone who had custody or control or made any entries in that log book. You have here a man in San Fran-

(Testimony of Frank A. Johnson.)

cisco, apparently from the Shipping Commissioner's office, who is endeavoring to state, apparently, that this particular book was kept in the regular course of the ship's business on a vessel that this man was not a member of and at a time apparently when the voyage was long concluded. I don't believe that this offer that has been made by the Government is sufficient that this log book is the log book of the Escambia or that any entries made in the log book, if it is the log book, were made in the regular course of ship's business.

Even if that were supposedly shown by this man, there is nothing to show by whom the entries were made or when they were made. I don't see how the Government can show on this showing that the offer of this log book falls within the frame work of the Business Records Entry Act under which I assume they are trying to offer it.

Mr. Resner: I join in that objection, your Honor.

Q. (By Mr. Mitchell): Would you state the normal disposition of a log book, the official log book, from a vessel at the termination of its voyage? [32]

A. At the termination of a voyage the shipping commissioner, which I am designated as, or which may one be, goes to the ship and pays the crew off, but before—prior to paying this crew off the log is examined and checked by the deputy shipping commissioner, and if there is any errors in the log it is to be brought to the attention of our investigators. The log and—and on completion of the voy-

(Testimony of Frank A. Johnson.)

age the log and the articles are returned to our office at 630 Sansome Street.

Q. Does that refer to all log books—all official log books—of any vessel?

A. Of any vessel; not particularly in San Francisco, but any port they may terminate their voyage in this particular case it is San Francisco.

Q. Whenever the vessel terminates its voyage, the shipping commissioner has jurisdiction and custody of the log book? A. That is correct.

Mr. Mitchell: We submit, your Honor, that this log is the official log of the *Escambia* and is coming from the proper custody at this time.

The Court: Let me inquire. When did you first see this log book?

The Witness: This particular log?

The Court: Yes.

The Witness: This morning, sir.

The Court: That is the first time you saw it?

The Witness: Yes, sir. [33]

The Court: Where did you get it?

The Witness: I got it from Mr. Mitchell here.

The Court: From whom?

The Witness: Mr. Mitchell.

The Court: And when?

The Witness: This morning, sir.

The Court: And aside from that, you know nothing about it, only it is here?

The Witness: Only what the log entries are.

The Court: The proper foundation hasn't been laid for this log.

(Testimony of Frank A. Johnson.)

Mr. Mitchell: Has been laid, your Honor?

The Court: Has not.

Mr. Mitchell: The log book was delivered approximately a week ago, or two weeks ago, when these cases first came on for hearing.

The Court: There is an absence of that in this record. You must develop and lay the foundation.

Mr. Mitchell: Very well, your Honor. At the time that the case of Mr. James P. Staples came on for hearing before Judge Carter we called the shipping commissioner and asked them to come forward and bring the log books and the articles for this vessel. They did that. They were not needed that day because the trial was set over for today, and at that time they suggested [34] that they leave them with me, and I signed a receipt for them, to be held until the time of trial, at which time we asked them to send another man to sustain the part that the official log books and the articles are taken into the custody of the shipping commissioner at the time of signing off the vessel.

Mr. Resner: Counsel can't lay a foundation by making a statement, your Honor.

The Witness: Your Honor, these have been receipted for, these logs.

The Court: What is that?

The Witness: These logs have had a signed receipt for at the shipping commissioner's office.

The Court: We don't question that at all, but they are entitled to know the history of this log,

(Testimony of Frank A. Johnson.)

who had it, who examined it, and the manner in which it was kept.

Mr. Resner: Still no foundation, your Honor.

The Court: I will give counsel an opportunity to lay the foundation.

Mr. Mitchell: One moment, your Honor. The shipping commissioner has testified that their office is the official custodian of all log books and articles, and by that testimony he has shown that this is an official record and is so kept in his custody. As to the passing of the log book——

The Court: He didn't see it until you gave it to him this morning. [35]

Mr. Mitchell: Previous shipping commissioners have seen it and I have receipted for it.

The Court: You haven't it in the record. They are entitled to examination on this. I will give you time to get the necessary witness here to lay the foundation for this.

Mr. Mitchell: At this time the respondent would ask for a recess until this afternoon for the possibility of bringing in the original shipping commissioner that had these articles, your Honor.

Mr. Resner: May I say something?

The Court: We will go on with this case. Withdraw this witness, and hear any other testimony.

Mr. Mitchell: Pardon me?

The Court. We will go on with this case and withdraw this witness. You may call him this afternoon, if necessary.

Mr. Mitchell: Thank you, your Honor.

At this time, your Honor, the respondent would ask that the depositions in this case be unsealed and read into the record.

The Court: Any objections?

Mr. Resner: No, your Honor.

The Court: Proceed.

Mr. Mitchell: This is the deposition of Morris W. Mote taken September 19, 1957, in the matter of the petitions of James P. Staples, Bernard D. Oslin and Richard C. Cooper.

Appearances for petitioners Staples and Cooper [36] Charles M. Haid, Jr., Esquire; for petitioner Oslin, Herbert Resner, Esq.; for the respondent Lloyd H. Burke, United States Attorney, Keith R. Ferguson, Special Assistant to the Attorney General, by Jerry W. Mitchell, Esq., Attorney for Department of Justice.

Mr. Resner: If your Honor please, can Mr. Haid and I follow the reading on this in the original deposition and the Government read from their copy of it, please?

The Court: No objection?

(Mr. Mitchell thereupon read from page 2, line 1 to page 2, line 24, inclusive, as follows:)

“Mr. Mitchell: It is now the hour of 1:45 p.m. and Mr. Resner has not made an appearance in this matter, so we will proceed with the deposition, call having been placed to Mr. Resner’s office and he not being present in his office.

“This deposition of Captain Morris W. Mote is pursuant to Notice and is being taken de bene esse

(Deposition of Morris W. Mote.)

before a Notary Public authorized to administer oaths, at Room 447-A, United States Post Office Building, Seventh & Mission Streets, San Francisco, California, on the 19th day of September, 1957, commencing at the hour of 1:30 p.m. and continuing thereafter from day to day until completed.

"Be It Remembered that, pursuant to Notice, and on Thursday, September 19, 1957, commencing at the hour of 1:30 o'clock p.m. thereof, at the office of the Admiralty and Shipping Section, Department of Justice, Room 447-A, United States Post Office Building, Seventh and Mission Streets, San Francisco, California, before me, Harry A. Canon, a Notary Public in and for the City and County of San Francisco, State of California, personally appeared Morris W. Mote, called as a witness by the respondent herein, being by me first duly sworn, was thereupon examined and interrogated as herein after set forth."

The Court: This was on the 19th?

Mr. Mitchell: Yes, your Honor.

The Court: How could he be there when he was engaged here?

Mr. Mitchell: Pardon?

The Court: How could he be there when I had him busy here?

Mr. Resner: I did appear your Honor, it was Friday before we started the trial. We started on the 23rd, your Honor.

The Court: Oh, that's right. I got confused on the date.

(Deposition of Morris W. Mote.)

Mr. Resner: But I appeared on the deposition, anyway, your Honor. There's no point there.

The Court: Proceed, counsel.

(Mr. Mitchell proceeded with the reading of the deposition from page 2, line 25, to and including to page 11, line 16, as follows:)

"Charles M. Haid, Jr., Esquire, appeared as proctor on behalf of the petitioners, James P. Staples and Richard C. Cooper;

"Herbert Resner, Esquire, appeared as proctor for the petitioner, Bernard D. Oslin; and

"Lloyd H. Burke, United States Attorney, Keith R. Ferguson, Special Assistant to the Attorney General, represented by Jerry W. Mitchell, Esquire, Attorney, Department of Justice, appeared as proctors for the Respondent.

"Mr. Mitchell: It is now 1:51. Mr. Resner is present.

"May it be stipulated that all objections, except as to the form of the questions propounded and the responsiveness of the answers, shall be reserved to each of the parties until the time of trial; and that the reading, signing and sealing of the deposition by the witness is waived and the deposition shall have the same force and effect as though signed and sealed?

"Mr. Resner: I won't stipulate to that. I will stipulate to the form of the questions and the responsiveness of the answers, not as to the waiver of signing and sealing. I will not stipulate to the waiver of signature to the deposition.

"Mr. Haid: I will stipulate on all of it.

(Deposition of Morris W. Mote.)

“Mr. Mitchell: Fine.

“May it be further stipulated that this deposition shall be reported by Harry A. Cannon, Certified Shorthand Reporter and a disinterested person, and thereafter transcribed by him to type-writing, the original to be forwarded under the seal of the Notary Public to the Clerk of the United States District Court for the Northern District of California, Southern Division?

“Mr. Resner: Yes.

“Mr. Haid: So stipulated.

“Mr. Mitchell: In this regard, Mr. Haid, may it be stipulated that we will cover and include Mr. Cooper’s case in this deposition?

“Mr. Haid: Yes.

“MORRIS W. MOTE

called as a witness on behalf of the respondent, upon being first duly sworn to tell the truth, the whole truth, and nothing but the truth, testified as follows:

“Examination by Mr. Mitchell

“Mr. Mitchell: Q. State your name, please.

“A. Morris W. Mote.

“Q. How old are you, Captain? “A. 58.

“Mr. Resner: Before you start, is this one deposition or three separate depositions?

“Mr. Mitchell: We are going to proceed on one deposition.

“Mr. Resner: O.K. I don’t want the record or anything I may say or may not say here to mean that I concede that the witness’ testimony as it ap-

(Deposition of Morris W. Mote.)

plies to the petitioners Staples and Cooper applies to the case of the petitioner Oslin. In other words, I am saving all of my legal objections in that regard.

“Mr. Mitchell: Q. What is your residence, Captain Mote?

“A. 2019 Barbara Drive, Palo Alto.

“Q. Is there another address where you can be reached? “A. When?

“Q. At any time, if you are not reachable at that address.

“A. 1211 East Monte Vista, Phoenix, Arizona.

“Q. Captain Mote, where will you be on or about the 27th of September?

“A. To the best of my knowledge, I will be at 1211 East Monte Vista, Phoenix, Arizona.

“Q. Do you know how long you will be there?

“A. My plans are indefinite.

“Q. What is your occupation, Captain Mote?

“A. Master Mariner.

“Q. What licenses do you hold in that regard?

“A. Unlimited Master, ocean.

“Q. When did you obtain that license?

“A. You mean my original Master's license?

“Q. Yes.

“A. In the month of July, 1945.

“Q. You have held that license since that time?

“A. Yes, and the renewals thereof.

“Q. How long have you sailed as a Master, Captain?

“A. As Master, about four years.

(Deposition of Morris W. Mote.)

"Q. On what type of vessels?

"A. Tankers.

"Q. What was the last vessel you sailed on?

"A. USNS Escambia.

"Q. How long were you aboard that vessel?

"A. From July 30, 1956, to August 19, 1957.

"Q. In what capacity?

"A. As Chief Mate from July 30 to August 21, 1956; as Master August 22, 1956 to August 19, 1957.

"Mr. Mitchell: Will you please mark this document as Respondent's Exhibit 1 for identification?

"(Rough log book, USNS Escambia, April 20, 1957-June 19, 1957, marked for identification Respondent's Exhibit No. 1.)

"Mr. Mitchell: Q. Captain, I hand you a document. Do you recognize it? "A. I do.

"Q. Will you state what it is?

"A. It is a rough log book, USNS Escambia, for the period April 20, 1957, to June 19, 1957.

"Q. Captain, do you recall where your vessel was on or about the early part of May, May 5 or thereabouts?

"A. May 5—May 4 to May 8, in Sasebo, Japan, except for a sortie to clean tanks.

"Q. Do you remember when the vessel arrived in Sasebo?

"A. I don't remember the hour, no.

"Q. Would you refer to the log book, please, and find us the date and the time?

"A. (Witness referring to Respondent's No. 1.)

(Deposition of Morris W. Mote.)

“Mr. Resner: Is the witness using the log book in order to refresh his recollection?”

“The Witness: Yes.

“Mr. Mitchell: Yes, he is.

“Mr. Resner: Do you have any independent recollection of when you arrived, Captain?”

“The Witness: The date. I couldn't give you the hour. I am looking up the hour.

“Mr. Resner: I understand. But before you can refresh your recollection, we have to exhaust the possibility of whether you have an independent recollection.

“The Witness: I arrived on May the 4th, 1957.

“Mr. Resner: And the hour is unknown to you without reference to the log book?”

“The Witness: Yes.

“Mr. Mitchell: Q. Refer to the log book, please.

“A. (Witness referring to Exhibit 1.) The hour of arriving at Sasebo was 1148.

“Q. What time did the vessel dock; what time did she dock?”

“A. I would have to refer to the log book to refresh my memory on that matter.

“Q. You are saying, Captain, you have to refer to the log book to refresh your memory as to times?”

“A. As to the hour that the vessel docked.

“Q. Let the record show that. Would you refer, then?”

“A. (Witness referring to Exhibit 1.) 1330. The vessel was all fast.

“Mr. Haid: What time?”

(Deposition of Morris W. Mote.)

“Mr. Resner: 1:30.

“Mr. Mitchell: 1:30.

“Mr. Resner: Could I interrupt a second while we are on this subject? Exactly where did it dock?

“The Witness: At the Iori Zaki Dock.

“Mr. Mitchell: Q. Following docking, what time was your cargo started discharging?

“A. It would be necessary to refer to the log book to refresh my memory as to the exact time.

“Q. All right, do that.

“A. (Witness examining Exhibit 1.)

“Mr. Resner: How could any of these questions be material to the charge in this case? I object upon the ground of materiality.

“Mr. Mitchell: You can answer the question.

“A. Repeat the question.

“(Question read by the reporter.)

“A. At 1810 on May the 4th, 1957.

“Mr. Haid: I take it that is oil you were discharging?

“The Witness: JP-4—jet fuel.

“Mr. Mitchell: Q. Would you state the time—first of all, Captain, when you arrive in a port, what notice is given of any future movements of the vessel or sailings, whatever may happen?

“A. As soon as it can be determined, the sailing board is posted indicating any future movement of the vessel.

“Q. Who sets the time for that future movement?

(Deposition of Morris W. Mote.)

“A. Well, the chief mate is the one who is responsible for the cargo and usually makes the decision as to the time any cargo movement will become—cargo handling will be completed.

“Q. Where is such notice of movement posted?

“A. On a blackboard at the gangway.

“Q. Do you recall at what time or if a board was posted on your arrival in Sasebo?

“A. I don't recall.

“Q. Would it be shown in the log book?

“A. It would.

“Q. Would you refer to that and see.

“A. (Witness examining.) At 1400 the sailing board was posted.

“ ‘Call back deck department. Vessel shifts May 5 at 0900.’

“Q. Is that a direct quote from that log book, Captain?

“A. I will continue it. ‘(9 AM.)’

“Q. Now, Captain, do you recall if the vessel did shift at that time on May 5?

“A. I don't recall. There were several changes in movement while we were there. I do not recall.

“Q. Can you recall any of the times of that without refreshing your memory?

“A. No, I can't.

“Q. Let's refer to the log book, then, further. Do you find any entries concerning sailing board?

“A. (Witness examining log book.) Yes. 0900 ‘Deck Department crew check made. All on board except Roggemans and Corral.’

“ ‘1000. Changed crew call back to 0700 Monday

(Deposition of Morris W. Mote.)

May 6, 1957, on MSTTS orders to hold vessel at dock until departure to sea (for tank cleaning purposes.)'

Q. Going on with——

"Mr. Resner: Could I see that log book for a few minutes, please?

"Mr. Mitchell: Yes. (Mr. Resner examining Exhibit No. 1.)

"Mr. Resner: Go ahead.

"Mr. Mitchell: Q. Captain, on May 5 could you tell us when cargo was completed, discharge of cargo?

"A. Not without referring to the log book.

"Q. Would you return the log book, please, Mr. Resner?

"Mr. Resner: Yes. (Handing to witness.)

"(Witness examining log book.)

"A. Cargo was completed on May 5 at 1315.

"Mr. Mitchell: Q. That is 1:15 p.m. Now, the last sailing board entry you read was that the crew was called back for 0700 on May 6. Can you recall whether the vessel sailed at that time on May 6?

"A. I can't recall the exact hour that it did sail.

"Q. Will you refer to the log book and read the entry concerning sailing, please?

"A. The last line was off the dock at 0820.

"Q. And where did the vessel go?

"A. Departure was at 0900.

"Q. Where did the vessel go at that time, Captain?

(Deposition of Morris W. Mote.)

“A. Just outside the harbor to clean tanks.

“Q. To clean tanks? “A. Yes.

“Q. Is this a standard or routine procedure on a tank ship?

“A. No, the purpose of going outside and cleaning tanks was that we were to, in fact, load another cargo. Normally we would clean tanks on the ballast leg of the voyage, on our way to the next port. And this is that we cleaned tanks and return to Sasebo.

“Q. In this case what did the cleaning of the tanks consist of?”

Mr. Resner: If your Honor please, I would like to interpose an objection at this time on the grounds of materiality, to [37] this question and the whole series of questions that follows, knowing what is coming. The proposition was that this tank ship went outside of Sasebo for a while and cleaned out the tanks. The contention of the Government in this case is that these three seamen deserted the ship at Sasebo. The only issue in this case, your Honor, is whether these seamen deserted the ship and whether their money ought to be forfeited to the Government. The question of whether this vessel was cleaning tanks, out to clean tanks, why they cleaned tanks, their movements around the dock, and all of those things have nothing to do with the only issue before the Court, namely the issue of desertion, and I think it only consumes an awful lot of needless time to go into these petty details which have nothing to do with the issues in this

(Deposition of Morris W. Mote.)

case, so I object on the ground of materiality.

Mr. Haid: I join in that objection, your Honor.

Mr. Mitchell: The Government's position on this is that at the time we took the deposition, we had no knowledge of what the defense would be to the charge of desertion. In some cases a charge is made that the sailing board was not posted, the vessel's movements weren't known and therefore they missed the vessel. In order to forestall that, we have introduced the evidence as to the movements of the vessel and the actual time the board was posted and the amount of notice given to the crew in order to alert them as to the time of sailing and movement. [38] Therefore we feel that it is material to the case.

The Court: For that limited purpose I will allow it.

Mr. Resner: But it doesn't help any, your Honor.

The Court: What is it?

Mr. Resner: I say it doesn't help. How do you butterworth a ship? They clean it out with hot water. What has that got to do with this case.

Mr. Haid: This all occurred two or three days before the charge of desertion. The ship was fooling around in and out of Sasebo.

The Court: Isn't it a fact that the issue in this case and the only issue in this case is, did these three men desert the ship?

Mr. Mitchell: That is true, your Honor, but part of the time of these movements in the port some of the men were missing during the movements and

(Deposition of Morris W. Mote.)

did not return to the vessel at any time subsequent before sailing.

Mr. Resner: That still has nothing to do with whether they deserted. That is the ultimate question here, your Honor, the question of desertion. The movement of the ship and what the ship did has nothing to do with it. If they deserted, they deserted.

The Court: What date was this desertion?

Mr. Mitchell: One of the men deserted on May 5th, and two of them did their last duty on May 7th. The vessel sailed from [39] Sasebo on May 8th.

Mr. Resner: There couldn't have been a desertion until May 8th under any circumstances.

The Court: Why not?

Mr. Resner: Because the vessel was in port. You get desertion when the ship leaves and the men aren't on it.

Mr. Mitchell: The fact remains, your Honor, they did not do their duties on those days and it is all material to establish intent to desert.

Mr. Resner: If they didn't do their duty, your Honor, the remedy is very simple on that. The master logs the man, he brings him up and reads the log and docks him. We are not concerned with that here. Your Honor isn't passing on whether they did their work or not, or whether they should be docked or not. Your Honor is trying to determine whether the Government has a right to forfeit all the money these men had earned by deserting the ship on May 8th when it sailed from Sasebo. That

(Deposition of Morris W. Mote.)

is the only issue here. They can keep us here for four days of this kind of triviality, but the only issue is desertion, your Honor.

Mr. Haid: It is quite simple, your Honor. These three men were not aboard when the ship sailed on May 8th shortly after 5:00 p.m. on that date. Were they ashore because they intended to desert or were they ashore because they failed to join because of some mishap or something? What the ship was [40] doing on May 4th, 5th, 6th, 7th, and 8th up to the time of sailing when they were charged with desertion—butterworthing the tanks, shifting ship, discharging cargo, loading cargo, has nothing to do with this case.

Mr. Mitchell: On the contrary, your Honor, it is material for the reason that a person's intent is demonstrated by his actions, his statements, his activities and everything else which would bear on whether he had the intent to desert, and therefore whether he complained or whether he was dissatisfied would be absolutely irrelevant to the issue.

The Court: We have any number of these cases. As counsel has indicated, the only issue in the case is whether or not they deserted. Go right to it. The manner the ship was loaded a day or two before or after is immaterial.

Mr. Mitchell: It is immaterial to that point, but it is material to the point of establishing intent which is necessary to desertion.

The Court: Very well in the interest of time let us proceed subject to your motion to strike and over your objection.

(Deposition of Morris W. Mote.)

(Mr. Mitchell continued reading from the deposition page 11, line 16 to and including page 14, line 25, as follows:)

“Q. In this case what did the cleaning of the tanks consist of?

“A. Everything with hot water.

“Q. How is that done, just the general description? I mean, what type of equipment is used or what equipment aboard the vessel is in operation at that time?

“A. Pumps, Butterworth heating equipment, the Butterworth machine is something in the nature of a glorified lawn sprinkler which shoots hot water to all parts of the tank, at a pressure of 175 pounds, a temperature of 180 degrees.

“Q. I see. How long did that ‘butterworthing’ process take?

“A. I would have to refer to the log book, to be exact.

“Q. Would you do that, please?

“A. (Witness examining log book.) We started ‘butterworthing’ at 1037 on the 6th. Finished ‘butterworthing’ at 2145—no, cancel that. Everything was finished at 0030 on the 7th.

“Q. What were the movements of the vessel following completion of ‘butterworthing’, Captain?

“A. Proceeded slowly to the harbor entrance so as to make a daylight arrival, which is a requirement in that port. Arrived at 0542.

“Q. When you arrived at that port, did you enter? “A. Yes.

(Deposition of Morris W. Mote.)

“Q. Where did you proceed on entry?

“A. We were secured alongside Yokose Oil Dock at 0803.

“Q. Was any notice of future movements of the vessel posted?

“A. Refreshing my memory with the log book (examining log book), the sailing board was posted at 0800.

“Q. On what date?

“A. On the 7th, to read: ‘Vessel shifts at 0700 (7:00 a.m.) tomorrow 5-8-57. Call for deck department. Ship sails at 1400 (2:00 p.m.) Wednesday, 5-8-57.’

“Q. Did the vessel sail on May 8th?

“A. Yes. I would have to refresh my memory, looking at the log book, as to time.

“Q. Would you refer to the log book and give us the time the ship cleared the dock, please?

“A. At 1716 on May the 8th, the last line off the dock.

“Q. Were there any other movements prior to that time, Captain?

“A. There is an entry in the log book to the effect ‘0750 Change sail board to read “Vessel sails for sea 5-8-57 at 1600.”’

“Q. Were there any other movements prior to that?

“A. No, we said from Yokose Dock, Now, wait a minute, let me change that. We shifted from Yokose Dock to anchorage.

“Q. What time did you leave the dock?

(Deposition of Morris W. Mote.)

“A. We left the dock at 0713.

“Q. What time did you arrive at anchorage?

“A. We anchored at 0746.

“Q. And you read in at 0750 you changed the sailing board?

“A. Changed the sail board to read the vessel sails for sea at 1600.

“Q. Were there any other movements that day of the vessel?

“A. No, not till she sailed.

“Q. You originally read an entry that the vessel cleared the dock at 1716 and you have her at anchor now, Captain.

“A. Now, wait. 0713 we cleared the dock. We anchored at 0746. I will have to refresh my memory (referring to log). Oh, yes, we heaved anchor at 0903 and we moved to Iori Zaki dock.

“Q. What time?

“A. We were all fast at Iori Zaki dock at 1032. I remember now. We anchored because of traffic congestion and made fast at Iori Zaki dock at 1032.

“Q. And then?

“A. We loaded cargo at Iori Zaki dock until 1540.

“And at 1716 last line was off the dock and clear of the dock. And at 1806 departed Sasebo.

“Q. Was that your last movement at Sasebo on that day?

“A. The last movement in Sasebo was from anchorage to Iori Zaki Berth No. 3, and then from Iori Zaki Berth No. 3 we proceeded to sea.

(Deposition of Morris W. Mote.)

“Q. Thank you, Captain. Captain, at the commencement of this voyage what type of articles were assigned?”

“A. Foreign articles, voyage to port or ports westward of Los Angeles and back to the ports of discharge on the Pacific Coast of the United States for a term of not more than 12 months.

“Q. Have you sailed under such articles before, Captain?” “A. Yes.

“Q. On what type of vessels?”

“A. Navy tankers.

“Q. The same type of vessel as this one?”

“A. The same type of vessel.

“Q. Captain, how was the food during this trip?”

“Mr. Resner: Is there an issue about quality of the food in this case, Mr. Mitchell?”

“Mr. Mitchell: No, there is not.

“Mr. Resner: Well, the question is irrelevant.”

Mr. Resner: I object, your Honor, counsel says there is no issue about the quality of the food.

The Court: It may go out. The objection will be sustained. We are not concerned here with the food or how much was consumed. [41]

Mr. Mitchell: The same statement, if I may, your Honor, about intent. Whether the food was good or bad will raise part of the reason for leaving the vessel.

The Court: The Court has ruled. It will go out.

Mr. Mitchell: “Was there very much sickness aboard the vessel during the voyage?”

Mr. Resner: I object, your Honor, on the grounds

(Deposition of Morris W. Mote.)

of immateriality. There is no issue of sickness here.

The Court: Objection sustained.

(Mr. Mitchell continued reading from the deposition from page 15, line 11, to and including line 3, page 17, as follows:)

“Q. Captain, do you know James P. Staples, one of the petitioners in these causes?

“A. I do.

“Q. When and where did you know him?

“A. I know him on board this vessel, on the USNS Escambia.

“Q. Do you know when he boarded it, approximately?

“A. I don't remember whether he boarded with the crew we shipped in San Francisco or the replacements we shipped in San Pedro. It was either August 23 or September 19, if my memory serves me right, 1956.

“Q. What capacity was he serving in aboard the vessel?

“A. He came aboard the vessel dispatched from the union as oiler. When there was a vacancy, due to the inability of the union to fill, as second pumpman, he requested to go second pumpman, which was approved by the union, and he started the voyage from San Pedro as second pumpman aboard the vessel, if my memory serves me right.

“Q. What are the general duties of a second pumpman?

“A. The duties of a second pumpman are to assist the first pumpman in handling the cargo and

(Deposition of Morris W. Mote.)

the maintenance of cargo carrying machinery, and the chief engineer's department in the maintenance of machinery in general.

"However, Mr. Staples was promoted to first pumpman before the voyage was completed.

"Q. Do you happen to recall the date he was promoted? "A. I don't recall, no.

"Q. Approximately.

"A. I believe it was February, 1957, but I am not positive.

"Q. Was it prior to your arrival in Sasebo?

"A. Yes.

"Q. What would the duties of first pumpman be? Are there any additional duties, I should ask, in addition to the second pumpman's duties?

"A. The first pumpman is responsible for the maintenance of all cargo handling machinery and for the discharging of cargo and ballasting the vessel and unballasting the vessel.

"Q. Does he have any duties at the time of 'butterworthing'?

"A. Oh, yes, he is one of the most important people. He runs the stripping pumps and gets the dirty water out of the tank.

"Q. When did Mr. Staples last perform his duties aboard the vessel?

"A. I don't know the exact hour, but it was after midnight, on the morning of May 5.

"Q. What occurred at that time?"

Mr. Haid: If your Honor please, in anticipation of this answer, it is clearly hearsay in that the

(Deposition of Morris W. Mote.)

captain is being asked to give an answer as to something that somebody on board the vessel told him concerning Mr. Staples. He has already said that he doesn't know when Mr. Staples last performed his duty, and the question then "what occurred at that time?" It is obvious on the face of it that it is pure hearsay that the captain is being asked for. I object to this answer.

The Court: Is the matter submitted?

Mr. Mitchell: The question that started this was, your Honor, "I don't know the exact hour, but it was after midnight on the morning of May 5th." He is stating a time, and he is asked what occurred at that time. He didn't know the exact hour. [42]

Mr. Resner: But the answer is hearsay. The answer is, "A report was made to me by so and so about such and such."

The Court: That may go out, proceed.

Mr. Mitchell: (Reading) "Q. Who relieved him at that time? "A. The chief engineer.

"Q. Was he granted shore leave?

"A. Not by me.

"Q. At this time? "A. Not by me.

"Q. Do you know if he was granted shore leave by anyone? "A. I do not."—

Mr. Haid: If your Honor please, I would like to move to strike anything further in that answer of four or five more lines. The answer is given in the first three words which Mr. Mitchell has read, "I do not," and then he goes on to explain about something was said about this, that and the other.

(Deposition of Morris W. Mote.)

The Court: I can't anticipate what is coming, but if your statement is correct——

Mr. Haid: The question was, "Do you know if he was granted shore leave by anyone. A. I do not." And then he goes on——

Mr. Mitchell: He goes on to say something that he specifically told the man in his answer.

The Court: Proceed.

(Mr. Mitchell continued reading from the deposition from page 17, line 11 to and including page 17, line 22, as follows:)

"A. I do not, but I do know that when he asked time off when the vessel got in, I told him he could have time off after the cargo was out and the vessel was ballasted, and he was ordered by me to remain on board until the cargo was out and the vessel was ballasted.

"Mr. Haid: This is by you personally?

"The Witness: By me personally, as a result of a request by him for time off, there being no man to relieve him.

"Mr. Mitchell: Q. Did he know of the sortie for tank cleaning?

"A. I do not know whether he did or not. I didn't personally see him to tell him of it. I was informed that he had been told."

Mr. Haid: If your Honor please, I would like to move to strike out the last part of that answer. The question was, [43] "Did he know of the sortie for tank cleaning?" A. "I do not know whether he did or not. I didn't personally see him to tell

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him of it." And then he adds "I was informed that he had been told."

The Court: What he was informed may go out.

(Mr. Mitchell continued reading from the deposition from page 17, line 23 to and including page 23, line 24, as follows:)

"Q. Was he on board during your sortie for tank cleaning? "A. He was not.

"Q. Did he board the vessel on return from your sortie from tank cleaning?

"A. Not to my knowledge.

"Q. Where was he last seen by you?

"A. I don't know the exact place. I saw him ashore one time.

"Q. Did you speak to him at that time?

"A. I don't recall whether it was before or after the tank cleaning sortie, but I think it was after.

"Q. Did you speak to him at that time?

"A. I don't know whether I spoke to him directly, personally, or not. I sent a message to him, but whether it was delivered or not I can't say.

"Q. What was the purport of that message?

"A. A reiteration of a formerly stated principle that anyone missing a ship would be logged as a deserter.

"Mr. Haid: I take it all objections, in accordance with our original stipulation, are reserved?

"Mr. Mitchell: Yes, correct. That is as to the form of the question—as to the form of the question propounded and the responsiveness of the answer.

(Deposition of Morris W. Mote.)

"Mr. Haid: All right.

"Mr. Mitchell: Q. During the course of the voyage, prior to this time did Mr. Staples ever mention anything to you concerning the length of his intended stay aboard the vessel? "A. No.

"Q. Nothing at all? "A. No.

"Q. Did he ever ask for a mutual consent discharge?

"A. No, Mr. Staples did not.

"Q. After your sailing from Sasebo, did you receive any information concerning Mr. Staples from your agency?

"A. Upon arrival of the vessel in Yokohama, the agent informed me that Mr. Staples and Mr. Cooper had been shipped out on, I believe, the Alamo Victory, from Yokohama; that they had been returned from Sasebo by the Japanese Immigration Authorities, held until they were shipped.

"Q. To your knowledge did the vessel suffer any expense by reason of this failure to sail with the vessel?

"A. The only expense that had been incurred would be additional overtime that would be expended due to the fact that the vessel was short-handed.

"Q. Did you have to make any communications with your agency or with your controlling authority in the Far East concerning this?

"A. I sent the usual radiogram to the head office in Los Angeles apprising them of the fact that, of course, there would be some expense involved

(Deposition of Morris W. Mote.)

against the company and indirectly against the vessel for their maintenance and care while they were under the custody of the Japanese Immigration Authorities and any transportation involved in moving them about in Japan would be, of course, charged.

“Q. Now, as to Mr. Oslin, Captain, do you know him? “A. I do.

“Q. Where and when did you know him?

“A. Aboard the USNS Escambia, deck maintenance man.

“Q. During this voyage?

“A. During this voyage. He shipped aboard the vessel, if my memory serves me right, on August 21, 1956; signed foreign articles on August 19—September 19th, 1956; proceeded aboard the vessel, continued aboard during the voyage until May 8, 1957.

“Q. What were the general duties of a deck maintenance man in the capacity that Mr. Oslin was sailing?

“A. To work from 8:00 to 5:00, Monday through Friday, at sea and in port, at the direction of the boatswain under the orders of the chief officer.

“Q. What, if any, duties does he have during the shift of the vessel?

“A. Handling mooring lines, assisting in general in mooring and unmooring the vessel, as any deck hand.

“Q. When were these duties last performed by Mr. Oslin? “A. I believe on May the 7th.

(Deposition of Morris W. Mote.)

“Q. When was he last aboard the vessel?

“A. On May the 7th.

“Q. Was he granted shore leave at that time?

“A. I do not know. The chief mate may have or may not have granted him shore leave.

Q. When did you last see Mr. Oslin?

“A. To the best of my ability to recall, when we returned from tank cleaning sortie. That was the morning of May 7, I believe.

“Q. Did you have any conversation with him?

“A. No. Let me correct that. I saw Mr. Oslin ashore on May 7th.

“Q. Did you talk to him at that time?

“A. Yes, at that time I talked to him.

“Q. Do you remember what was said at that time?

“A. I told him—I asked him what he was doing ashore. He said, ‘Oh, I’ll make the ship.’

“I said, ‘If you miss the ship, you will be logged as a deserter.’

“Q. Do you recollect the time of day this was?

“A. No, I don’t. I was busy running back and forth to the Naval Supply Depot, and stores.

“Q. At any time during the voyage part of this time had Mr. Oslin ever mentioned anything to you concerning the length of his intended stay aboard the vessel? “A. No, he had not.

“Q. Did he ever ask for mutual consent discharge? “A. He had not.

“Q. Now, referring to Mr. Cooper, the third petitioner in this case, Captain, do you know him?

(Deposition of Morris W. Mote.)

“A. I do.

“Q. When and where?

“A. As a member of the crew of the USNS Escambia from if I remember correctly, August 21, 1956, until May 7, 1957, in the capacity of able seaman.

“Q. What are the general duties of an able seaman, Captain?

“A. Stand watch eight hours a day at sea and in port.

“Q. What are his duties when the vessel is being shifted or moving?

“A. To handle lines, as any other seaman does, or take a trick at the wheel, when and if it is his turn at the wheel.

“Q. When did Mr. Cooper last perform these duties?

“A. To the best of my knowledge on May 7, 1957.

“Q. Was he granted shore leave at that time?

“A. Well, he was granted shore leave at any time he was off watch after the vessel was secure, provided there was no call-back for further shifts.

“Q. Do you know what watch he stood?

“A. I don't remember at that particular time. I believe it was the 4:00 to 8:00.

“Mr. Cooper: 8:00 to 12:00.

“The Witness: 8:00 to 12:00.

“Mr. Haid: Stipulate it was 8:00 to 12:00.

“Mr. Mitchell: Q. Did you have any conversations with Mr. Cooper during your stay in Sasebo?

(Deposition of Morris W. Mote.)

"A. Yes, I saw Mr. Cooper ashore, warned him against missing the ship.

"Q. During the voyage did Mr. Cooper ever make any statement to you concerning his intention as to how long he would be aboard the vessel?

"A. No.

"Q. Did he ever ask for mutual consent discharge? "A. Yes.

"Q. Did you grant the mutual consent discharge?

"A. No. I explained it was impossible.

"Q. Did he make any further remarks after that?

"A. No. During this conversation where I stated that it would be impossible for me to give a mutual consent discharge, I said the only way he could get off would be to get off and desertion was a possibility if he did. He said, well, he wasn't going to do that.

"That conversation took place at sea between Manila and Sasebo, before we got into Sasebo.

"Q. And before arrival in Sasebo at this time?

"A. Yes.

"Q. This voyage. "A. Yes.

"Q. Did Cooper return aboard the vessel on May 8th?

"A. I do not know, of my own knowledge. It was reported to me that he did not.

"Q. Did he have any contact with the vessel on that date?

"A. It was reported to me that he sent a ship-

(Deposition of Morris W. Mote.)

mate aboard to get some money that he had left with his watch partner and bring it ashore to him.”

Mr. Haid: I move to strike that last answer as obviously hearsay.

The Court: “It was reported to me,”—it may go out.

(Mr. Mitchell continued reading from the deposition from page 23, line 25 to and including page 25, line 5, as follows:)

“Q. Who did he send aboard?

“A. I do not know.

“Q. After your sailing from Sasebo did you see any of the three men involved here at any other time? “A. I did not.

“Q. Were you ever in a port where they were, to your knowledge?

“A. I was in Yokohama at the same time Oslin was in Yokohama.

“Q. Did he come aboard the vessel then?

“A. He did not.

“Q. Was he assigned to another vessel at that time?

“A. He was. The Mission Lovetto. It sailed after our vessel sailed, and I was somewhat disappointed that Oslin didn't come aboard and get his clothing and gear that he left aboard.

“Q. Did he make any attempt to? “A. No.

“Q. Prior to your arrival in Sasebo, Captain, was there at any time any incident concerning any of these men during the voyage that would have a bearing upon—strike that.

“Q. Prior to your arrival in Sasebo, Captain,

(Deposition of Morris W. Mote.)

was there any incident during the voyage where any of these men were concerned as to returning to the vessel?

“Mr. Resner: I object to the form of that question. It is unintelligible.

“Mr. Mitchell: Answer the question, Captain.

“A. Oslin and Cooper went ashore in Manila and they were, as far as I know, both ashore without permission; and when they were told to return to the boat landing at a certain hour, it was necessary for me to hold the boat almost an hour to get them back to the ship. And following that incident and the fact that the vessel had been sailing constantly seven men short, I called the union delegates up to my office and gave them a statement and requested that they bring it up at the next meeting of the crew aboard the vessel, to the effect that” * * *

Mr. Resner: If your Honor please, I am going to object to the balance of this answer. What was said to the union delegate outside of the petitioners' hearing is obviously hearsay.

The Court: It may go out.

(Mr. Mitchell continued reading from page 25, line 18, to and including page 26, line 20, as follows:)

“Mr. Mitchell: Q. Captain, in referring to the log on Wednesday—

“Mr. Resner: I move to strike out the answer.

“Mr. Haid: I am going to join in Mr. Resner's objection.

“Mr. Mitchell: Q. Referring to the log on May

(Deposition of Morris W. Mote.)

8th, Captain, you indicated the vessel was at anchor approximately 0745 in the morning and that it came away from anchor about 0910. During that time was there any launch service to the vessel?

“A. No official launch service, no. Whether or not private launches came and went, I don’t know.

“Q. Was there any regular launch service set up by you or by your agency ashore?

“A. Yes, while the vessel was docked; not in that short stay at anchorage, no.

“Q. You say while the vessel was docked?

“A. Yes.

“Q. Did you have launch service to your dock?

“A. That was necessary because of these oil installations, men could not come to the vessel—to go to the installation they had to come by launch.

“Mr. Haid: What dock are we talking about?

“Mr. Mitchell: This was the last one, the one they sailed from.

“The Witness: These conditions are true of all docks.

“Mr. Mitchell: I don’t recall the name of this dock. That’s all of my questions for now. You may cross examine.”

Mr. Resner: Wait a minute. This is my cross examination, if your Honor please, and I waive it.

Mr. Mitchell: We would submit that it should be introduced into evidence, your Honor.

Mr. Resner: I don’t have to read my cross examination. I waive it.

Mr. Haid: The same applies, if your Honor

(Deposition of Morris W. Mote.)

please, with regard to my cross examination of the witness. I waive it also.

Mr. Mitchell: If part of a deposition is introduced in evidence, your Honor, I think it all should be introduced.

Mr. Resner: That is not true.

Mr. Haid: This is our cross examination.

The Court: There may be admissions or something developed on cross examination that inured to the benefit of the Government. Have you anything in mind in that respect?

Mr. Mitchell: Yes, your Honor, there are some statements in there. I feel it should all go in.

The Court: Well, what are they? Advise the Court.

Mr. Mitchell: There is a discussion of pensions aboard the vessel; a discussion of the captain's interpretation of desertion, whether intent is necessary and how he establishes intent in his mind. It is all in here in the cross examination.

The Court: Very well. We will let it go in.

We will take a recess.

(Recess.)

Mr. Mitchell: Shall I continue, your Honor?

The Court: Continue.

(Mr. Mitchell thereupon continued reading from the deposition from page 26, line 20 to and including page 28, line 7, as follows:)

“Cross Examination

“By Mr. Resner: Q. Captain Mote, how many

(Deposition of Morris W. Mote.)

times have you made this run out to the Far East, this type of run?

“A. That’s a hard question to answer. I have been at it continuously for the past ten years.

“Q. I understand.

“A. With few exceptions.

“Q. And at ports in the Persian Gulf where you take aboard cargo, shore leave is not allowed?

“A. That’s true.

“Q. I mean, apparently the Asian countries or principalities, whatever they are, have objections to the—don’t allow seamen ashore?

“A. That’s correct.

“Q. So that the only shore leave that crew members are afforded are at the ports in Manila and Formosa, Korea and Japan, on that leg of the voyage?

“A. That’s correct.

“Q. And how long is the run between the Gulf and these Far Eastern ports, as far as days are concerned?

“A. Sixteen to eighteen days each way.

“Q. When you once get out there from the West Coast, it then becomes a continuous shuttle between the Gulf and these ports in the Far East?

“A. That’s correct.

“Q. I understand this is regarded as a very difficult job for both master, officers and crew, because of the fact of the restrictions upon shore leave and the fact that you are out for a long time and away from home, is that true? “A. That is true.

“Q. I understand that many tensions build up

(Deposition of Morris W. Mote.)

on the ship between the crew members and between the crew members and the officers, is that true?

"A. Not any more than they build up in any group of men that are held together a long period of time.

"Q. Now, perhaps my question isn't as intelligible as it should be. On the usual cargo run, let's say between here and the Far East, a ship will, say, dock in the Hawaiian Islands and then maybe go down to Australia or the South Pacific and then to ports in Asia, and, wherever the ship goes, why, the men are afforded shore leave; that's true, isn't it?

"A. That's true."

Mr. Resner: May I offer an objection, your Honor, at this point?

The Court: Very well. [45]

Mr. Resner: I am sorry to be late; I went down to pick up a book.

If your Honor feels that Mr. Mitchell can read the cross examination which I have waived, I feel that for the purpose of the cross examination he has made the captain his own witness on cross examination. In other words, it is just the same as direct. I think the rules so provide.

The Court: Read the rule.

Mr. Resner: I am a bit out of breath. Of course there isn't anything in the Supreme Court Admiralty Rules about depositions so we have to go to the Federal Rules of Civil Procedure for analogy to determine that particular point.

Rule 26(f): "The effect of taking or using a deposition. A party shall not be deemed to make a

(Deposition of Morris W. Mote.)

person his own witness for any purpose by taking his deposition. The introduction in evidence of the deposition or any part thereof for any purpose other than that of contradicting or impeaching the deponent makes the deponent the witness of the party introducing the deposition; but this shall not apply to the use by an adverse party of a deposition. At the trial or hearing any party may rebut any relevant testimony contained in a deposition whether introduced by him or any other party."

And inasmuch as we have waived it and they are using it, I would say that this makes Captain Mote for all purposes on the entire testimony their witness. [46] Would your Honor like to see the rule?

Mr. Mitchell: I would disagree with that, your Honor. Admiralty Rule 13 of the Rules of Practice of this court, states:

"If only part of an admissible deposition is offered into evidence by a party, any other party may require him to introduce all of it which is relevant to the part introduced."

Mr. Haid: Well, we are not requiring Mr. Mitchell to introduce anything. We are asking that it be specifically not introduced. We are not requiring him to do anything. He is doing it on his own; that is the whole point of this.

Mr. Resner: Your Honor, if he wants to use part of it, we can compel him to use it all, but he can't compel us to use any of it. He took the deposition; we didn't. In other words, it is his witness, not ours—the same thing as if we had Captain

(Deposition of Morris W. Mote.)

Mote in court here, your Honor, and Mr. Mitchell had finished asking him a lot of questions, we wouldn't be compelled to ask him a single question if we didn't want to.

Mr. Haid: We could just say we waive cross examination.

Mr. Resner: And that is what we are doing here.

Mr. Mitchell: That is true, your Honor, but they have already cross examined the man and it is part of the deposition, part of the evidence in this case.

Mr. Resner: If they want to use it. He is their witness; that is exactly the point. We don't want to use it.

Mr. Haid: We have decided it isn't worth while.

The Court: How many pages is it?

Mr. Mitchell: Thirty more, your Honor, of the cross examination. There is quite a bit of relevant material in here, your Honor; we feel it should be in the case.

The Court: For the purpose of disposing of this matter, indicate the important things that you have in mind in relation to it?

Mr. Resner: May I ask a question, your Honor?

The Court: Yes, certainly.

Mr. Resner: What is your Honor's disposition as to our contention that what he might use is on his case and not on ours? In other words, it is the same as direct examination, not cross examination. Does your Honor follow me on that point?

The Court: Not clearly.

Mr. Resner: Usually, of course, no one is bound by cross examination. In this case, since we have

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waived our cross examination, we feel that if it is used to any extent Mr. Mitchell is using that as testimony on his own case the same as direct examination. We wouldn't be bound by it under any circumstances, and if he wants to use it, and if your Honor feels he can, it is in connection with his case in chief and his direct testimony. That is our point.

The Court: I just wanted to know what there was in this examination that he had in mind that would be beneficial to the Government. [48]

Mr. Mitchell: As I stated before, your Honor, the discussions of the master interpretation of what desertion includes or what is desertion.

The Court: I will be able to define that without any difficulty. The objection will be sustained.

Mr. Mitchell: There are also other entries in it concerning, for instance, the mutual consent discharge asked by Mr. Cooper which is very relevant to the case.

The Court: The Court has ruled. I sustain the objection.

Mr. Haid: That was asked and answered on direct examination. It has all been covered.

Mr. Mitchell: Shall I proceed with the redirect?

Mr. Resner: Page 49.

(Mr. Mitchell thereupon read from the deposition from page 49, line 16 to and including page 56, line 9, as follows:)

“Mr. Mitchell: Q. Captain, in regard to these desertions, who preferred the charge of desertion against them? “A. I did.

(Deposition of Morris W. Mote.)

“Q. You, officially? “A. Yes.

“Q. Was there any witness?

“A. The witness to the entry in the log book, whose signature is opposite mine in the official log.

“Q. In such a case, what is he a witness to?

“A. A witness to the log entry.

“Q. Do you recall who it was, in this instance—these instances?

“A. To the best of my knowledge it was the chief officer, Mr. Wheeler.

“Q. Captain, when a man misses a vessel, at what time do you prepare his accounts, or conclude them? “A. At what time?

“Q. Following his missing the vessel.

“A. Sometime between the time the man misses the vessel and the next port.

“Q. And the next port? “A. Yes.

“Q. Captain, you said that you had spent ten years' service in these vessels, in answer to a question of Mr. Resner's. What are the normal articles that are signed on this type of a voyage?

“A. Articles for one voyage from a port—in this instance, Los Angeles—to port or ports to the westward of the Pacific Coast of the United States, or to a specific port, and such other ports as the vessel may be directed by the U. S. Government, or any agency thereof, and return to the Pacific Coast, to the port of final discharge on the Pacific Coast of the United States, for a period of not to exceed 12 months.

“Q. In your experience, has that been the type

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of articles that have been signed on all of these voyages? "A. Yes.

Q. "At the time of signing on a vessel are the seamen informed of the length of the voyage intended?

"A. It's required by law that the shipping commissioner read the articles to the seaman before he signs the articles, to make sure he understands them.

"Q. Does such a reading include the length of the voyage? "A. It does.

"Q. Captain, how many men are required for shifting the ship at any time in port, moving from dock to dock or dock to anchorage, or such as that?

"A. All of the deck department is expected to be on board. It is their duty to be on board. And enough men in the engine room to run the machinery. Officers. Master.

"Q. Referring back to Mr. Oslin, did he perform any duties on May 7th, to your recollection?

"A. I believe he did, yes. Moored the vessel.

"Q. In such a case, when should Mr. Oslin have returned to the vessel if he had been granted shore leave?

"A. He should have been aboard the vessel at eight o'clock the morning of May 8th.

"Q. At eight o'clock, Captain? "A. Yes.

"Q. I think you read us a sailing board entry or posting for 1400 on the 8th, and for a shift for 7:00 a.m. on the 8th.

"A. 7:00 a.m. on the 8th. Well, in that event he

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should have been aboard at 7:00 a.m. on the 8th.

“Q. In other words, he was——

“A. He should have been aboard it to shift the vessel.

“Q. He was necessary to shift the vessel?

“A. Yes.

“Q. He would then also be necessary, of course, to dock it again?

“A. To do his work from 8:00 to 5:00.

“Q. Do you recall what time Mr. Staples asked to be relieved?

“A. I do not. I don't know what time he asked to be relieved, nor what time he was relieved. I know it was before cargo was out.

“Q. Do you recall when Mr. Cooper last performed his duties?

“A. To the best of my—so far as I know, from 8:00 to 12:00 at night on May 7th. He either performed his duties or made arrangements with someone else to perform them. But as far as I know his duties were performed.

“Q. When should he have been aboard on May 8th? “A. Eight o'clock in the morning.

“Q. I might call your attention again that the board was posted for shift at 7:00.

“A. He should have been aboard for his watch at 8:00, and the shift at 7:00.

“Q. His duties also called for him to share in shifting the vessel? “A. Yes.

“Q. Captain, in answering a question of Mr. Resner's, you mentioned letters received concern-

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ing, 'Why stay aboard the vessel?' Could you elaborate on that?

"A. On the previous voyage the steward and one other man had missed the ship; had written letters to crew members telling how fast they got home and how easy it was. Now, I can't say to whom those letters were written. I know that they were common; that I saw one of them myself.

"Q. Now, you say on the previous voyage. Is that—

"A. The previous time in Sasebo.

"Q. In Sasebo? "A. March the 25th.

"Q. That was still in the course of these articles?

"A. Of the long voyage. Yes, still in the course of these articles on the long voyage.

"Q. In response to questioning by Mr. Haid you indicated that the men had three hours to be aboard after this time that word was passed to them, or—

"A. No; after the time they were supposed to be on board, the vessel did not sail until three hours after the time they were supposed to be on board.

"Q. That is what I wanted to bring out, Captain. That three hours you talk about, then—

"A. The sailing board was posted for 1600. They are supposed to be on board one hour before sailing. The vessel sailed at 1806.

"Q. That is the three hours you referred to in answer to that question? "A. Yes.

"Q. I see. Now, when Mr. Cooper asked you for

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a mutual consent discharge did he give a reason for asking that? "A. No.

"Q. Did he offer any reason or exense that would support a mutual consent discharge?

"A. No.

"Q. What was the occasion of his asking for one? Was it in your office?

"A. No, it was on the wing of the bridge. One morning he called me out and asked me if it would be possible to get a mutual consent discharge.

"Q. Now, in reference to the launches, or the boat service to the vessel, how many boats per day were arranged for by the company?

"A. Four boats a day.

"Q. What times were those?

"A. I don't recall exactly. I know that the last one was always arranged to leave shore at 2300. There was one, I believe, that left shore at 1700 and left the ship at 1800, and one around noon, and one in the early morning. The first boat out to the vessel was usually at 0600 from shore, 0700 from ship.

"Now, those times were varied to meet circumstances. If the vessel was due to shift—like, for instance, the sailing board was posted for 1600, the last official boat was at 1500 that day.

"Q. Then one hour before sailing there would be a launch? "A. Yes.

"Q. That is what you are saying?

"A. Yes.

"Q. Was that service regular?

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“A. Yes. It was regular except for variations due to operational requirements.

“Q. There was a schedule of that service posted on the vessel?

“A. Posted on the vessel, posted on the bulletin board at the gangway, and in Suzy’s Bar.

“I recall an answer to one of your questions, Mr. Haid, if you would like it. There was one man who missed the ship after this incident.

“Mr. Haid: Q. Did you log him for desertion?

“A. No. I was confident there was no intent to desert. He missed the ship in Honolulu a few days before the ship was due home.

“Mr. Mitchell: Q. Prior to your arrival in Sasebo, Captain, had any of these three men been late, or ashore, beyond the time posted for sailing?

“A. Yes.

“Q. Could you name which ones had been?

“A. To the best of my recollection all three of them had been.

“Q. Had this occurred more than once?

“A. Yes.

“Mr. Mitchell: I think that is all, Mr. Haid.

“Recross Examination by Mr. Haid”

Mr. Haid: I waive it.

Mr. Mitchell: That completes that deposition, your Honor.

Shall I proceed with another one?

The Court: Yes.

Mr. Mitchell: These next depositions, your Honor, were taken in Los Angeles, and at Mr.

Resner's request were separated into three separate and distinct depositions.

Mr. Resner: They weren't separated at my request. The young man in the U. S. Attorney's office down there didn't know quite what to do. He didn't have instructions from San Francisco. [49] In Los Angeles they need instructions from San Francisco; up here they need instructions from Washington. The young boy didn't know what to do so he decided to take three of them. I had nothing to do with that.

Mr. Mitchell: In the matter of the petition of James P. Staples for an order setting aside forfeiture of his wages, in Admiralty No. 20,954, deposition of Edward L. Wheeler, Wednesday, September 18, 1957, Room 601, United States Post Office, Court House Building, Los Angeles, California.

(Mr. Mitchell thereupon read from the deposition of Edward L. Wheeler commencing on page 1, to and including page 8, line 22, as follows:)

“Appearances: For the Respondent United States of America: Lloyd H. Burke, United States Attorney, Keith R. Ferguson, Special Assistant to the Attorney General, Jerry W. Mitchell, Attorney, Department of Justice, Room 447-A Post Office Building, San Francisco 1, California, by: Norman R. Atkins, Appearing. For the Petitioners James P. Staples and Richard C. Cooper: Roos, Jennings & Haid, San Francisco, California, law offices of Bodle & Fogel, 458 South Spring Street, Los Angeles 13, California, by: Charles H. Warren.

(Deposition for E. L. Wheeler.)

“Mr. Atkins: Pursuant to notice, this deposition of Edward L. Wheeler, a witness for the Respondent, is being taken de bene esse before a Notary Public authorized to administer oaths at 600 Federal Building, Los Angeles, California, at the office of the United States Attorney on the 18th day of September, 1957, commencing at the hour of 4:10 p.m., and continuing thereafter from day to day until completed. And may it be stipulated that all objections except as to the form of the questions propounded and to the responsiveness of the answer shall be reserved for each of the parties until the time of trial, and that the reading, signing, and sealing of the deposition by the witness is waived, and the deposition shall have the same force and effect as though signed and sealed?”

“Mr. Warren: I will stipulate to all of that except as to objections as to responsiveness of the answers are concerned. I will stipulate that all objections are reserved except as to the form of the question.

“Mr. Atkins: As stated, then?”

“Mr. Warren: No, not as stated. As I stated it.

“Mr. Atkins: In other words, you are reserving responsiveness objections as well as all others, so the only objection that is not reserved is as to the form of the question, is that correct?”

“Mr. Warren: That is correct.

“Mr. Atkins: So stipulated. May it be further stipulated that this deposition will be reported by Frank O. Nelson, Certified Shorthand Reporter, and a disinterested person, and thereafter tran-

(Deposition for E. L. Wheeler.)

scribed by him in typewriting, the original to be forwarded under the seal of the Notary Public to the Clerk of the United States District Court for the Northern District of California?

“Mr. Warren: Yes, so stipulated.

“E. L. WHEELER

a witness herein, called as a witness by the Respondent, having been previously duly sworn by the Notary Public, was examined and testified as follows:

“Direct Examination

“Q. What is your name?

“A. E. L. Wheeler.

“Q. And your address?

“A. 5212 Beeman Avenue, North Hollywood.

“Q. And your Z number?

“A. Z296093.

“Q. What is your occupation?

“A. Merchant seaman.

“Q. Did you ever serve on the USNS Escambia?

“A. Yes, sir, I did.

“Q. When?

“A. Approximately September of 1956 to September of 1957.

“Q. In what capacity did you serve aboard the USNS Escambia during those dates?

“A. Chief Mate.

“Q. What is a Chief Mate?

“A. Chief Mate is second in command of the vessel.

(Deposition of E. L. Wheeler.)

“Q. And, generally, what are his duties?

“A. Generally, in charge of the deck department, maintenance of the deck department, the cargo, the cargo movement, the keeping of the crew personnel records, wages, and overtime.

“Q. Directing your attention to May 5th, 1957, do you recall what port you were in?

“A. We were in Sasebo, Japan.

“Q. What date did you arrive?

“A. We arrived Saturday, May 4th.

“Q. When did you depart for sea?

“A. We departed for sea May 8th.

“Q. What were the activities of the *Escambia* while in Sasebo?

“A. We discharged a cargo of jet fuel.

“Q. What date was that?

“A. That was May 4th.

“Q. What did you do then?

“A. We layed alongside of the dock until the next day.

“Q. Which was?

“A. Wait a minute, now. I am sorry. We discharged the ship May 4th through May 5th. We finished the discharge May 5th.

“Q. What did you do then?

“A. We layed there at the dock overnight and the next day went out to sea to clean tanks preparatory to back loading.

“Q. Where did you go after you cleaned tanks?

“A. We returned to the Port of Sasebo.

“Q. And what did you do then?

(Deposition of E. L. Wheeler.)

“A. We back loaded another cargo.

“Q. What date was that?

“A. We back loaded the cargo May 8th.

“Q. What time of day did you sortie for the tank cleaning?

“A. I am sorry, I didn't hear you.

“Q. What time of day did you sortie for tank cleaning? I believe the date you gave was—

“(Discussion held off the record.)

“Mr. Atkins: Withdraw the question.

“Q. What was the date that you sortied for tank cleaning?

“A. Monday, May 6th.

“Q. What time did you sortie?

“A. The last line in was 0820.

“Q. What was the time of return, date of return, after tank cleaning?

“A. Tuesday, May 7th.

“Q. What time was that, do you remember?

“A. 0800 we were all fast.

“Mr. Atkins: Off the record.

“(Discussion held off the record.)

“Mr. Atkins: (Continuing) All right, on the record.

“Q. Were there any other movements in Sasebo Harbor during May 4th to May 8th?

“A. Yes. We docked May 7th at this one dock. We took a part load and we lay overnight at the dock. That was the time we posted the sailing board for 7:00 o'clock, a 7:00 o'clock shift the next morning. The next morning we shifted to anchorage and

(Deposition of E. L. Wheeler.)

then from anchorage we went to the second loading dock. That was May 8th. And that loading dock, from that loading dock we proceeded to sea.

“Q. What time was that?

“A. The last line was off the dock at 1716.

“Q. You stated that you sortied for tank cleaning. What is tank cleaning?

“A. Tank cleaning is to flush both the lines and wash down the sides of the tank to take out the previous residue of the cargo and to allow you to load a different commodity without contamination of cargo.

“Q. Is there another word for tank cleaning?

“A. It is commonly called Butterworthing.

“Q. Will you describe the procedure for Butterworthing?

“A. In Butterworthing you use a high pressure hose with twin nozzles attached that are universally mounted so that they rotate. These hoses are lowered into the tank through opening provided for it and, as the water is put in under pressure and temperature, it directs streams against the sides of the tank working it down to the bottom of the tank where it is taken out by the ship's pumps and discharged into the sea as slops.

“Q. Do you know one James P. Staples?

“A. Yes, sir; I do.

“Q. How did you come to know him?

“A. He was originally signed on the vessel as assistant pump man, or second pump man, and when the other pump man was taken off because of

(Deposition of E. L. Wheeler.)

illness early in the voyage, he was promoted to chief pump man.

“Q. Was he a part of the crew during this voyage?

“A. He was a part of the crew during the voyage.

“Q. What were his duties while the vessel loaded and unloaded?

“A. While the vessel was loading he had no duties relative to the deck department. But, while the ship was discharging or tank cleaning operations, his duties were operating the ship's cargo pumps.

“Q. Who was Staples' immediate superior officer?

“A. Staples is officially a member of the engine department, and his immediate superior would probably be the Chief Engineer. During cargo operations, I was his immediate superior.

“Q. Who was the Chief Engineer during the voyage?

“A. The Chief Engineer's name was Nicky Schubkegel. We called him Nick.

“Q. What duties did Staples have during Butterworth operations?

“A. During Butterworth operations his duties were pumping the slops residue from the bottoms of the tanks as it came in through these Butterworth machines and discharging it through the pipe lines system into the sea.

(Deposition of E. L. Wheeler.)

“Q. Was Staples present during the Butterworth operations in Sasebo?”

“A. Staples was—

“Q. Between May 4th and May 8th of 1957?”

“A. Staples was absent without leave during that period.”

Mr. Haid: If your Honor please, I move to strike that answer. It has already been established earlier that Staples was a member of the engine room and his immediate superior would be the chief engineer. This question was directed to the chief mate. It would be purely something that would be beyond his knowledge and he was absent without leave.

Mr. Mitchell: Your Honor, in answer to the question as to who his immediate superior was a part of the answer was, “during cargo operations I was his immediate superior.” That is the way the chief officer answered the question.

Mr. Haid: This question concerned the tank cleaning operations, not cargo operations. His immediate superior during tank cleaning operations would be the chief engineer, not the [50] chief mate. The question was: “Was he present during butterworth operations?” Which is tank cleaning. The answer was that he was absent without leave. The chief mate wouldn't know.

The Court: I don't see how that is going to enter into the merits of this case, proceed.

Mr. Haid: It doesn't make much difference.

(Deposition of E. L. Wheeler.)

(Mr. Mitchell continued reading from page 8 line 23, to and including page 14, line 4, as follows):

“Q. How do you know he was absent?

“A. Because I had to run the cargo pumps myself.

“Q. When was that?

“A. During the Butterworth operations and during part of the discharge after we had arrived.

“Q. What date was that? On what date did you have to do his job?

“A. On May 5th the Chief Engineer came to me and requested that he be allowed to relieve Staples to finish the discharge so Staples could get some shore time. At that time I think I recall that I told Staples that I wanted him back for the Butterworth operations. I didn't see him again.

“Q. He was not present, then, during the Butterworth operations?

“A. He wasn't present from that time on. That was the last time I saw him, Sunday, May 5th.

“Q. Did Staples ever complain about the food aboard?

“A. Staples never complained about the food.

“Q. Did he ever complain about the living conditions?

“A. He did not complain about the living conditions.

“Q. His job?

“A. He complained, he was a chronic com-

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plainer, as far as his job was concerned. He felt that he was overworked.

“Q. Did he ever complain of illness?

“A. Outside of perhaps a headache after long hours, no.

“Q. Did Staples ever ask you for a mutual consent discharge?

“A. No, sir, he did not.

“Q. Did Staples ever tell you that he intended to desert the ship?

“A. No, sir, he did not.

“Q. Did the ship provide launch service for the crew to go from the ship to shore and back again?

“A. Yes, sir. It is standard procedure at all ports where liberty is allowed.

“Q. Was that procedure followed in Sasebo?

“A. Yes, sir, it was.

“Q. How many runs a day did the launches make in Sasebo between May 4th and May 8th, 1957?

“A. To the best of my recollection, there were two scheduled boats in the morning and two in the afternoon or evening period. That would be four.

“Q. Are ships' movements posted?

“A. Ships' movements are posted on what is known as a sailing board, a blackboard that is posted near the gangway to inform the crew as to the time they must be on board for various shifts or departure of the vessel.

“Q. To your own personal knowledge, was the

(Deposition of E. L. Wheeler.)

blackboard posted accurately for all movements during the period of May 4th to May 8th?

"A. I am positive it was.

"Mr. Warren: Well, I will object to the form of the question as assuming a fact not in evidence.

"A. Do you want me to explain about the sailing board?

"Mr. Atkins: Just answer the questions. I will ask them.

"Q. Was notice posted at any other place regarding the ship's movements besides on this blackboard by the gangway?

"A. In these two bars that were mentioned previously, Suzies Bar and one other.

"Q. Where are those bars located?

"A. Those bars are in the harbor area in Sasebo, near where the shore boats leave from.

"Q. Ships' movements are posted in those bars?

"A. It has been a practice that the latest man ashore usually writes on the blackboard what is going to happen to the ship.

"Q. When did you first learn that Staples was not aboard?

"A. Sunday, May 5th, at 1415. I had to start ballasting the ship to go to sea for the Butterworth operations.

"Q. Was he required to be aboard at that time?

"A. To ballast the ship, those were his duties.

"Q. He was not present for those duties?

"A. No, sir. I ballasted the ship myself.

"Q. What is meant by ballasting a ship?

(Deposition of E. L. Wheeler.)

“A. It is flooding the tanks with sea water to give the ship stability when she is in an unloaded condition.

“Q. Did Staples ever ask you for permission to remain away during the period during which he was away from the ship?

“A. He asked me for time off and I told him that I needed him.

“Q. You did not give him permission to remain away from the ship?

“A. I gave him permission Sunday, May 5th, to allow the Chief Engineer to finish discharging the vessel because the Chief Engineer came to me and requested this.

“Q. What period, then, was he ashore with permission?

“A. Well, he left at that time. The sailing board was posted for 0700 Monday, May 6th. So you might say he had permission to be ashore until 6:00 o'clock Monday morning, May 6th. He was not entitled to that. I gave it to him.

“Q. Was a search ever made of Staples' room?

“A. Yes, sir.

“Q. When?

“A. The departure from Sasebo, that would be either May 8th or May 9th, he was reported as missing May 8th, of course, but the search—well, the search was made May 8th, yes, sir.

“Q. Was his personal gear aboard?

“A. His personal gear was packed the following day by members of the engine department.

(Deposition of E. L. Wheeler.)

“Q. Do you know whether all of his personal gear was aboard?

“A. I do not know, sir.

“Q. Who gives permission to members of the crew to go ashore?

“A. Normally in ports where shore leave is not restricted, or where a crew is not held to the vessel for various reasons, on their off hours they are allowed to go ashore without specific permission.

“Q. And when are they required to be back under those circumstances?

“A. When it is time to report for their watch, if they are watch standers; at 8:00 o'clock in the morning if they are day men; or at any time that a notice is posted that they shall be back on the sailing board.

“Q. What type of Seamen was Staples?

“Mr. Warren: By that you mean his rating?

“Q. (By Mr. Atkins): By that I mean was he a day man, or a watch stander, or what?

“A. Well, at sea the pump man works from the hours of 8:00 to 5:00 as a day man. During cargo operations he works all the way through until the cargo is out of the ship. He is compensated in excess of eight hours at the overtime rate. His responsibility is to pump the vessel.

“Mr. Atkins: No further questions at this time.

“Cross Examination

“By Mr. Warren:”

Mr. Haid: Pardon me, your Honor.

(Deposition of E. L. Wheeler.)

Mr. Resner: May we have a minute?

Mr. Haid: Cross examination is waived.

Mr. Mitchell: Shall I proceed with the redirect, your Honor?

(Mr. Mitchell thereupon continued reading from page 30, line 9, to and including page 34, line 14, as follows):

“Redirect Examination

“Q. (By Mr. Atkins): Captain, you stated that on June 17th you put into Yokohama?

“A. Yes, sir.

“Q. Was there any other port that you put into between May 8th and June 17th, 1957?

“A. Yes, sir, Manila; Manila and Bahrein in the Persian Gulf.

“Q. Those two ports were between May 8th and June 17th?

“A. That is correct, sir.

“Q. Would there be any way of the crew knowing that you would be back in Yokohama on June 17th?

“A. As I said, some of the girls that hang around the waterfront keep pretty close track of these ship movements. It would be possible that the crew would know you would be back there, although our usual port was Sasebo. This was the first and only time we came into Yokohama.

“Q. Where a Seaman misses his ship sailing what steps would he take to rejoin the vessel at some other time?

(Deposition of E. L. Wheeler.)

“A. Well, on a run like this particular run he has two alternatives: To hide out until his money runs out, which they usually do, and then they turn themselves in to Immigration authorities; or try to pay their own way home immediately. I don't think it could be arranged that they could rejoin the ship because of the time we would be gone on a round-trip. In other words, when they are turned into the pool they have no choice as to what ship they go onto. The pool more or less sends them onto a ship in order of first in first out.

“Q. You stated that there was a conversation which took place on the deck of the USNS Escambia between yourself, the Chief Engineer, and Staples? “A. That is correct, sir.

“Q. You also stated at that time you granted permission for Staples to leave the ship?

“A. That is correct, sir.

“Q. You also stated that there was a notice posted on the board at the head of the gangway?

“A. Yes, sir.

“Q. What was it, what did the notice state, to the best of your knowledge?

“A. The notice was originally posted at 1400, May 4th, that ‘Vessel shifts at 0900 tomorrow.’ At 1000, Sunday, May 5th, the notice on the board was changed to ‘0700 Monday, May 6th, vessel shifts.’

“Q. Was that the status of the board at the time that Staples left the ship?

“A. That was the status of the board at the time Staples left the ship, which was 0700 Monday, May 6th.

(Deposition of E. L. Wheeler.)

Mr. Resner: May we have a minute?

Mr. Haid: Cross examination is waived.

Mr. Mitchell: Shall I proceed with the redirect, your Honor?

(Mr. Mitchell thereupon continued reading from page 30, line 9, to and including page 34, line 14, as follows):

“Redirect Examination

“Q. (By Mr. Atkins): Captain, you stated that on June 17th you put into Yokohama?

“A. Yes, sir.

“Q. Was there any other port that you put into between May 8th and June 17th, 1957?

“A. Yes, sir, Manila; Manila and Bahrein in the Persian Gulf.

“Q. Those two ports were between May 8th and June 17th?

“A. That is correct, sir.

“Q. Would there be any way of the crew knowing that you would be back in Yokohama on June 17th?

“A. As I said, some of the girls that hang around the waterfront keep pretty close track of these ship movements. It would be possible that the crew would know you would be back there, although our usual port was Sasebo. This was the first and only time we came into Yokohama.

“Q. Where a Seaman misses his ship sailing what steps would he take to rejoin the vessel at some other time?

(Deposition of E. L. Wheeler.)

“A. Well, on a run like this particular run he has two alternatives: To hide out until his money runs out, which they usually do, and then they turn themselves in to Immigration authorities; or try to pay their own way home immediately. I don't think it could be arranged that they could rejoin the ship because of the time we would be gone on a round-trip. In other words, when they are turned into the pool they have no choice as to what ship they go onto. The pool more or less sends them onto a ship in order of first in first out.

“Q. You stated that there was a conversation which took place on the deck of the USNS Escambia between yourself, the Chief Engineer, and Staples? “A. That is correct, sir.

“Q. You also stated at that time you granted permission for Staples to leave the ship?

“A. That is correct, sir.

“Q. You also stated that there was a notice posted on the board at the head of the gangway?

“A. Yes, sir.

“Q. What was it, what did the notice state, to the best of your knowledge?

“A. The notice was originally posted at 1400, May 4th, that ‘Vessel shifts at 0900 tomorrow.’ At 1000, Sunday, May 5th, the notice on the board was changed to ‘0700 Monday, May 6th, vessel shifts.’

“Q. Was that the status of the board at the time that Staples left the ship?

“A. That was the status of the board at the time Staples left the ship, which was 0700 Monday, May 6th.

(Deposition of E. L. Wheeler.)

“Mr. Warren: From what book are you getting that information, Captain? I notice that throughout the taking of your testimony you have referred to a book from time to time from which you have read various answers to questions propounded. Is that the official log?

“A. That is a bound volume which I keep for my necessary information that I must have for my paper work that is commonly referred to in the seafaring trade as the Mate’s log.

“Mr. Warren: Now, when you say you are required to keep that, is that by shipping regulations?

“A. No, there is no such law. I didn’t say I was required. I said I keep it for my own personal use.

“Mr. Warren: I see.

“A. I am required in the sense that without it I would have my paper work increased.

“Mr. Warren: So, when you testified as to the dates of arrival, departures, and numerous activities of the ship in question, and particularly about the wording on sailing board, you are testifying from that book, is that correct?

“A. These particular entries that I made are abstracts from the rough log. I made both entries, wrote it in the rough log and in this book.

“Mr. Warren: But, I mean with respect to your testimony today——

“A. With respect to my testimony today——

“Mr. Warren: ——as to those matters, you are refreshing it with that book, is that right?

(Deposition of E. L. Wheeler.)

“A. I am refreshing my memory with this book, yes, sir.

“Q. (By Mr. Atkins): Now, what type of book is this? Is it a bound book?

“A. It is a bound, standard record book, ledger.

“Q. Is it consecutively numbered, the pages?

“A. The pages are consecutively numbered, sir.

“Q. When do you make entries in this book in relation to the time when the events occur?

“A. While they are still fresh in my mind, as soon as feasible and my other duties don't interfere with the entry.

“Q. What is the longest time that has elapsed between an event and the recording of it in that book that you have?

“A. Shouldn't exceed an hour, as normal practice.

“Q. In the taking of this deposition regarding Staples have you testified by reading from that book, or by use of it to refresh your present recollection?

“A. The majority of this I refreshed my present recollection. On the writing of the sailing board it was an exact quotation.

“Mr. Atkins: Have the reporter mark that, your book, as Exhibit A.

“(Whereupon the book referred to was marked as Exhibit A for identification by the Notary Public.)

“Q. (By Mr. Atkins): (Continuing) What page of the book do you quote from, Captain?

(Deposition of E. L. Wheeler.)

“A. In regard to this preceding testimony concerning the sailing board, I quoted from page number 50 of the book.

“Mr. Atkins: No further questions.”

Mr. Haid: Further cross examination is waived.

Mr. Mitchell: That completes that deposition, your Honor.

Shall I proceed, your Honor?

The Court: Is that all the depositions?

Mr. Mitchell: There are two more, your Honor.

The Court: You indicated you wanted a continuance in this case this morning. Do you still want one?

Mr. Mitchell: If we could have a continuance until Monday, your Honor, in order to produce the Shipping Commissioner that actually received these official log books from the vessel. [51]

Mr. Resner: I am going to object, your Honor. This is a summary proceeding. Judge Carter told Mr. Mitchell not once but three separate times that this is a summary proceeding, he didn't want to keep putting it over. After all, these seamen's wages are on deposit in the registry of this Court, and he merely was being kind enough to the Government to let them have this much time.

The Court: It may remain there before we get through.

Mr. Resner: It is still a summary proceeding.

The Court: You keep in mind this fact: this is Friday afternoon and I have been sitting here in

this chair continuously every hour during the week, and I was just going to think of myself a little bit.

Mr. Resner: I would have no objection to that.

The Court: Aside from the fact that I think counsel is acting in good faith, and if you found yourself in the same position that he is, I would be equally charitable.

Mr. Resner: I don't think they can get that log book in under any circumstances.

The Court: I am not going to preclude them from an opportunity of trying.

Mr. Resner: Well, your Honor is very charitable.

The Court: No; I try to do the best I can under difficulties from time to time.

You will be prepared Monday morning at 10:00 o'clock? [52]

Mr. Mitchell: We will attempt to if we can reach this man.

The Court: Well, keep in mind that will be your last chance.

Mr. Mitchell: Yes, your Honor.

The Court: These men are here and they are entitled to their day in Court. They are ready and willing, I take it, to go to work whenever they can.

Mr. Resner: Yes, sir.

The Court: And since they have nothing in the world but a job, I don't want to interfere with it.

Mr. Mitchell: Yes, your Honor.

The Court: We will take an adjournment until 10:00 o'clock Monday morning.

Mr. Mitchell: Thank you, sir.

Mr. Resner: Thank you.

(Thereupon the further hearing of this case was continued until Monday, September 30, 1957, at 10:00 o'clock, a.m.) [53]

Monday, September 30, 1957, 10:00 o'clock a.m.

The Clerk: Petition for wages of James Staples, Oslin and Cooper.

Mr. Resner: Ready.

Mr. Mitchell: Ready.

Mr. Haid: Ready.

The Court: You may proceed.

Mr. Mitchell: At this time may the United States proceed by putting on a witness to identify the log book?

The Court: Proceed.

Mr. Mitchell: Will the Court call Joseph Narracci.

JOSEPH NARRACCI

called as a witness on behalf of the Respondent, after being duly sworn, testified as follows:

The Court: Your full name please?

A. Joseph Narracci.

Q. And where do you live?

A. Mountain View: 374 Faye Way, Mountain View, California.

Q. And your business or occupation?

A. I am chief yeoman, United States Coast Guard.

Q. Yeoman? A. That's right, sir.

Q. And how long have you been so engaged?

(Testimony of Joseph Narracci.)

A. In the Coast Guard about 17 and a half years, sir—16 and a half years. [54]

Q. Briefly, what do you do in relation to your activities?

A. Right at the present time I am assigned to the Merchant Marine Inspection office in San Francisco, which is a part of the Coast Guard, and I am in the Shipping Commissioner's office. I am assigned as deputy shipping commissioner for the United States Coast Guard.

The Court: Take the witness.

Direct Examination

Q. (By Mr. Mitchell): May I have that document you have?

A. (Document handed to counsel.)

Mr. Mitchell: I would like to have this marked for identification?

The Court: What is it?

Mr. Mitchell: It is an official log book, your Honor.

The Court: Let it be admitted and entered and marked for the purpose of identification.

The Clerk: Respondent's Exhibit B marked for identification.

(The log book was thereupon marked Respondent's Exhibit B for identification.)

[See pages 159-163.]

Mr. Resner: May we inspect this document, your Honor?

(Testimony of Joseph Narracci.)

The Court: You may.

Mr. Meadows: Your Honor, at this time may the record show my appearance in assistance of Mr. Mitchell—John Meadows of the Shipping Section.

The Court: What is your name? [55]

Mr. Meadows: John Meadows, sir, with Captain Ferguson, and I am assisting Mr. Mitchell in this case.

The Court: You are an attorney, are you?

Mr. Meadows: Yes, sir.

The Court: Let the record so show.

Mr. Resner: Thank you, your Honor.

Q. (By Mr. Mitchell): Mr. Narracci, what are your duties with the Coast Guard?

A. Deputy Shipping Commissioner.

Q. What does that duty include?

A. Well, it—the duties include signing and paying off merchant seamen on foreign voyages or on vessels that are going to a foreign port or returning from a foreign port. That is my main duty, plus making sanitary inspections, reading and checking the logs to see that the entries are made properly and other——

Q. Have you ever performed those duties with relation to the U.S.N.S. Escambia?

A. I have. I paid the ship off.

Q. And what date was that?

A. Well, I think it was the 15th or 16th of August.

Q. Of this year?

A. This year, yes, sir.

(Testimony of Joseph Narracci.)

Q. In what port?

A. Port of San Francisco.

Q. At that time did you see the official log book of the [56] U.S.N.S. Escambia?

A. Yes, I did.

Q. Could you identify it at this time?

A. I have it in my hand right now.

Q. That is the official log?

A. It is the official log of the U.S.N.S. Escambia.

Q. What duties do you have in relation to that log specifically at the time you were aboard the vessel for the pay off?

A. Well, as I said, to check it over for proper entries. There are different reports and drills that they have to hold aboard ship. Different ships have different drills to hold at different times, and upon completion of the pay off of the voyage I received the log from the captain and take it back to the office where they keep it, the custodian at the office.

Q. You returned the log of the U.S.N.S. Escambia to your office? A. I did.

Q. What is the title of that office?

A. The Shipping Commissioner's office.

Q. And what is the disposition of that log after you return it to that office?

A. It is kept on file and rechecked for—the personnel is checked and different loggings are checked. On serious loggings the men are brought up before the hearing to determine whether they should continue to serve or their shipping tickets

(Testimony of Joseph Narracci.)

removed, or probation for a certain time, whatever it happens to be, and [57] then they decide, depending on the seriousness of the offense, and the log is kept in the office.

Q. Who would be the official custodian of the log book?

A. Well, I imagine Captain Guerin would, the officer in charge of the Marine Inspection office.

Q. You are attached to that office?

A. Yes.

Q. Do you represent that office?

A. At the time right now, yes.

Mr. Mitchell: At this time we would offer the log book of the U.S.N.S. Escambia in evidence as Respondent's Exhibit next in order.

Mr. Haid: At this time we would like to object to the introduction of the so-called log of the Escambia in evidence. If your Honor please, I still think that no proper foundation has been laid in this case. [58]

* * * * *

The Court: The Court is now prepared to rule, gentlemen. The objection will be sustained.

Mr. Mitchell: Under Admiralty Rule 46-b, your Honor, we move that this be included in the record of excluded evidence.

The Court: I don't follow you.

Mr. Mitchell: We would like to make a record of excluded evidence for appeal, your Honor, and according to Admiralty Rule 46-b, if an objection to a question propounded to a witness is sustained

(Testimony of Joseph Narracci.)

by the Court, the latter upon request shall take and report the evidence in full unless it clearly appears that the evidence is not admissible on any ground or that the witness is privileged.

The Court: I haven't met that before.

Mr. Resner: I object to that too, they are trying to get in excluded evidence.

Mr. Mitchell: What we are trying to do is to make a record here.

Mr. Resner: I don't understand it.

Mr. Mitchell: The rule is quite clear, your Honor.

The Court: It is? Well, I never heard of it, and I have been around here a long time.

Mr. Meadows: To make a complete record, your Honor, it seems to be necessary rather than have any subsequent hearing on this. This is the rule in Federal Procedure.

The Court: Pass it up here. What section did you say? [67]

Mr. Mitchell: 46-b.

The Court: What evidence have you in mind?

Mr. Mitchell: This log book. We would like to introduce it in the record for excluded evidence.

The Court: I sustained an objection to that log book and that is your record. And it will be available. It is in for the purpose of identification.

Mr. Meadows: Your Honor, at this time would you admit this log book as our record of excluded evidence as well?

The Court: What is it?

(Testimony of Joseph Narracci.)

Mr. Meadows: Would you make a minute order admitting it as part of the record of excluded evidence? That it is in the record only would not be quite sufficient.

The Court: The log book is in evidence for the purpose of identification so that you have a complete record. And I sustained an objection to it.

Mr. Meadows: Very well. At this time, your Honor, we have made an offer of this log book as part of our record of excluded evidence. In other words, you haven't ruled upon that offer.

The Court: Offer of what?

Mr. Meadows: That the log is part of our record of excluded evidence, your Honor.

The Court: Let the record so show.

Mr. Meadows: Thank you, your Honor.

Mr. Resner: May I ask—are they through? [68]

Mr. Mitchell: Is the witness excused, your Honor?

Mr. Resner: I would like to ask a question. Are you through with your direct?

Mr. Mitchell: Yes, your Honor.

Cross Examination

Q. (By Mr. Resner): I just wanted to know this, Mr. Narracci; when did you deliver that official log book to the Government?

A. The day that I paid off the ship, sir, which was the 15th or 16th of August.

Q. And from the 15th or 16th of August, until the present time that log book has been in the pos-

(Testimony of Joseph Narracci.)

session of the Government attorneys, so far as you know? A. I don't know that, sir.

Q. Well, it has not been in your possession since August 15th, in the office of the Shipping Commissioner?

A. It was around the office for a couple of days; I know that.

Q. My question is this; answer it as best you can; I am not trying to quibble with you. Approximately on what day within a day or two, did you or your office deliver this official log book to the United States Attorney's office?

A. I don't know.

Q. Do you know what day? Do you have any idea?

A. I don't know. This is the first time I have seen it since I turned it over to the office.

Mr. Mitchell: Your Honor, I want to object to the materiality [69] of these questions here. They do not affect the issues in this case.

The Court: I will allow him to have a record. You may have the widest latitude.

Q. (By Mr. Resner): If you don't know when this document was delivered to the United States Attorney's office, who in your offices does know when it was delivered?

A. You can get that information from the Shipping Commissioner, I am sure.

Q. From the Shipping Commissioner?

A. Yes.

(Testimony of Joseph Narracci.)

Q. Well, aren't you the representative of the Shipping Commissioner?

A. I do, but I don't have the records with me.

Q. Could you find out by making a call to the Shipping Commissioner's office?

Mr. Mitchell: That would be hearsay, your Honor. We object to it.

Q. (By Mr. Resner): Well, could you find out?

A. If they would give me the information, yes.

Q. Is there a receipt for this log book when you delivered it to the United States Attorney's office?

A. I imagine they get a receipt. I didn't deliver it, but I imagine they do.

Q. Based upon your experience when you turn documents over to [70] the United States Attorney's office do you take a receipt for them?

A. Yes, sir.

Q. And does the date show when the document is delivered? A. Yes, sir.

Q. Who is the custodian of those receipts?

A. Commander Holm.

Q. Who?

A. Commander Holm, the Shipping Commissioner.

Q. Spell his last name? A. H-o-l-m.

Q. So he would have the receipts for the date upon which this document was delivered to the United States Attorney's office? A. Yes, sir.

Q. And he would know whether the document had come back to your office from that day to the present? A. Yes, sir.

(Testimony of Joseph Narracci.)

Q. But you don't know the answers to any of those questions? A. No, sir.

Mr. Resner: That is all.

The Court: Is that all from this witness?

Mr. Mitchell: Yes, your Honor.

The Court: Step down.

Mr. Mitchell: At this time the United States would continue with the depositions in this matter, if it please the Court. [71]

The Court: Proceed.

Mr. Mitchell: We have two more depositions, your Honor, of Mr. E. L. Wheeler, the chief officer, in relation to Mr. Bernard D. Oslin and in relation to Mr. Richard C. Cooper. They are quite repetitious to the ones we have read before, and for the convenience and the speediness of it, the Government at this time would suggest to only read portions that have not already been read in the other depositions.

The Court: These depositions went in on the theory of intent?

Mr. Mitchell: Yes, your Honor.

The Court: You have so indicated on the record discloses. But it is quite remote, as far as you have gone. There isn't a scintilla of evidence that I could act on, unless you have some corroborative testimony. However, I will give you a record on it. Proceed.

Mr. Mitchell: This deposition is of Mr. E. L. Wheeler in the case of Bernard D. Oslin in Admiralty No. 20,955. Eliminating the portions that are

repetitious, your Honor, I would start on page 7, at line 6, questioning on direct examination by Mr. Atkins representing the U. S. Government in this deposition:

DEPOSITION OF E. L. WHEELER

“Q. Are you responsible for the keeping of the ship’s log—official log?

“A. The official log—may we go off the record?

“Mr. Warren:”—who represented the petitioner Staples and Cooper—“Well, we are on the record.

“A. The official log is kept by the master. It is different from the smooth log and the rough log. The official log entries pertain to——

“Q. (By Mr. Atkins): The question was, are you responsible for making entries in the official log?

“A. In the official log, the master keeps the entries.”

And I will pass over to page 12—still direct examination by Mr. Atkins:

“Q. Now, do you remember or do you know a Bernard D. Oslin?

“A. Yes. Bernard D. Oslin was a maintenance a.b. aboard the ship.

“Q. Do you remember when he came aboard?

“A. He was on board the ship when I joined.

“Q. What were his duties aboard ship, first with reference to loading and discharging?

“A. Well, as to loading and discharging he had no duties. He was called a day worker. His hours

(Deposition of E. L. Wheeler.)

were from 8:00 to 5:00, 0800 to 1700, during which time he did maintenance work pertaining to the deck department, chipping, painting, tank cleaning. As far as discharge operations or loading operations, the watch standers, the men who are assigned to regularly assigned watches, are the ones who handle that."

We will pass on to page 15, line 21. Mr. Atkins asks the [73] questions.

"Q. Did Oslin perform all his duties during your period in Sasebo Harbor that he was required to perform? "A. No, sir, he did not.

"Q. What duties did he not?"

And on page 17:

"A. Now May 8 at 0615, in calling out the deck department Oslin was not on board.

"Mr. Resner: At what time?"

"A. 0615. Called out the deck department.

"Q. (By Mr. Atkins): Did you have occasion to see Oslin after that?"

"A. Well, this wouldn't be in here.

"Q. Did you have occasion to see Oslin after that?"

"A. Well, this wouldn't be in here. This is only official stuff that was in here.

"Q. Did you ever see him again?"

"A. I don't recall honestly, sir.

"Q. What duties was he to perform on the date he was reported not aboard?"

(Deposition of E. L. Wheeler.)

“A. In the deck department his duties consisted in docking and undocking the vessel, of working on the forward part of the vessel handling lines and winches to make the shift.

“Q. Who was Oslin’s immediate superior officer? “A. I would be. [74]

“Q. His immediate superior?

“A. As a licensed man, yes. Unlicensed it would be the boatswain.

“Q. What was his name?

“A. Gene Roggerman.

“Q. Did Oslin have permission to your knowledge to leave the ship?

“A. I gave nobody permission to leave the ship in my department. To explain, after we had docked at 5:00 o’clock, May 7th, he is off. His duties cease. He may leave the ship then. That is why the board was posted, a call back for the shift the following morning. He did not report back for the shift the following morning.

“Q. What was that date?

“A. May 7th at 1700 was the normal end of his working day. So naturally, he had—he didn’t have to get permission to go ashore. He naturally goes ashore.

“Q. What was the date and time that he was required to be back?

“A. As posted on the sailing board, 7:00 o’clock the following morning, according to union agreement they are supposed to report back one hour before the posted time.

(Deposition of E. L. Wheeler.)

“Q. Now any time during the voyage, during that particular voyage, did Oslin ever tell you anything about deserting the ship? [75]

“A. No, sir, he never told me anything about deserting the ship.

“Q. Did he ever express his feelings about his position aboard ship?

“Mr. Resner: I am going to object to the form of that question as calling for an opinion and a conclusion upon a matter that isn't relative here. The only issue in this proceeding is the question of desertion. Anything about feelings or opinions is completely beside the point.”

Mr. Resner: I ask your Honor to rule on my objection?

The Court: Objection sustained.

Mr. Mitchell: I would continue at page 24, line 21:

“Q. When you left Sasebo for sea was Oslin aboard? “A. Oslin was not aboard.

“Q. What steps were taken when it was discovered that he was not aboard for sea, if any?

“A. Then, after leaving each port, we make what is called a crew check, and in the log book a notation is made as to any men missing. Oslin was reported missing on the crew check and it was so noted in the log.

“Q. Did you search his living quarters?

“A. The whole ship is searched both for stow-aways and the crew check.

(Deposition of E. L. Wheeler.)

“Q. Did you search Oslin’s living quarters?

“A. Yes, sir, we searched all spaces on the ship. [76]

“Q. Was his gear aboard?

“A. His gear was on board, sir. The following day we packed it.

“Mr. Atkins: No further questions at this time.”

Mr. Resner: I waive my cross examination, your Honor.

The Court: Very well.

Mr. Mitchell: In the matter of Richard C. Cooper there are a few points in that deposition also, your Honor. This is direct examination by Mr. Atkins representing the Government in this matter and the objections and cross examination were by Mr. Warren representing Roos Jennings and Haid. I will go to page 5, line 10:

“Q. Do you know a Richard C. Cooper?

“A. Yes, sir, I do.

“Q. How do you come to know Richard C. Cooper?

“A. Richard C. Cooper was an able bodied seaman in a watch standing capacity aboard the *Eseambia* during the period of my time as chief officer on the vessel.

“Q. When did he come aboard?

“A. He was on board prior to my joining the vessel.

“Q. In what capacity did he serve?

“A. As an able bodied seaman.

(Deposition of E. L. Wheeler.)

“Q. What department?

“A. Deck department.

“Q. What were his duties aboard? [77]

“A. His duties were steering the vessel, standing lookout, and normal deck maintenance work, scraping and painting on his periods of watch, plus handling valves, cargo valves, turning of valves, connecting of hose during cargo operations.

“Q. Who was his immediate superior officer?

“A. His immediate superior would be the boatswain working under my direction.

“Q. Was Cooper aboard ship performing his required duties during the entire period when you were in Sasebo between May 4th and May 8th, 1957? “A. No, sir, he was not.

“Q. On the morning of May 8th—

“A. On the morning of May 8th, he missed the shift.

“Q. Did he miss the ship at the time the ship departed for sea?

“A. This was a shift from dock to anchorage awaiting the final loading berth.

“Q. And he missed that?

“A. He missed that, that is right. That was a call back for the deck department at 0700 the morning of May 8th.

“Q. Was he aboard when the ship departed for sea on May 8th?

“A. No, sir, he was not aboard when the ship departed for sea May 8th.”

(Deposition of E. L. Wheeler.)

Then we go to page 7, line 13:

“Q. Of your own present recollection, how long had the [78] sailing board contained the information as to the movement of the ship on May 8th and the departure of the ship for sea on May 8th?

“A. In excess of 24 hours.

“Q. When did you last see Richard C. Cooper?

“A. To the best of my knowledge, May 7th when the vessel docked.

“Q. Was he working? What was he doing at that time?

“A. Assisting in mooring the ship.

“Q. When was his presence next required aboard ship?

“A. They shift watches. I believe Cooper was on a 12:00 to 4:00 watch at this time, and normally he would have been required to be on shift from noon until 4:00 o'clock and from midnight until 4:00 in the morning. Those were his normal periods. I think he was on the 12:00 to 4:00. In the union agreement they shift watches every three months on those trips.

“Q. Then what was the actual time that he would have been required to be aboard?

“A. If it was the 12:00 to 4:00 watch and not say, the 4:00 to 8:00 or the 8:00 to 12:00 watch, he would be required to be aboard four on and eight off, and in between those periods of time. And I can't testify that he was on the 12:00 to 4:00 watch, truthfully, at that time. I think he was to the best of my recollection. Within the 24 hours, [79] he

(Deposition of E. L. Wheeler.)

should have been on board at least eight hours of that time, somewhere in that span.

“Q. That would be on May 7th?

“A. That would be May 7th—8th.

“Mr. Warren: Do you stand watches in port?

“A. We do not break watches on tankers.

“Mr. Atkins: Well, you can get him on cross, counsel.

“Q. Was a search made of Cooper’s room?

“A. When we departed?

“Q. Yes.

“A. Yes, a search was made of Cooper’s room together with all the other spaces on the ship, and an appropriate entry was made in the ship’s log book.

“Q. Was his gear aboard?

“A. His gear was aboard.

“Q. All of his gear?

“A. I do not know, sir.

“Q. Did he ever state to you an intention to desert the ship? “A. No, sir, he did not.

“Q. Did he ever express dissatisfaction with conditions aboard the ship?

“A. Not to the best of my recollection, although perhaps he might have griped. Griping is normal on those ships. It goes in one ear and out the other, as far as I am [80] concerned. I don’t pay much attention.

“Q. Did Cooper ever complain of illness?

“A. To the best of my recollection Cooper never complained of illness.

(Deposition of E. L. Wheeler.)

“Q. Did Cooper ever talk to you about obtaining a mutual consent discharge?

“A. He never discussed it with me. I understand by hearsay that he went up to the master and requested such a thing.

“Q. Did you give Cooper permission to remain away from the ship beyond the normal period from which he would remain away?

“A. I must explain this. On this run, because we do not break watches in port, to keep the man as happy on a psychological basis as possible, I let it be known to the deck department delegate who was the union representative aboard the ship, that as long as I have three men on a watch, if they want to arrange among themselves for time ashore, and another man is standing the watch for them, they have my approval.”

The Court: What he heard may go out, that he went to the captain, as hearsay.

Mr. Haid: Thank you, your Honor.

Mr. Mitchell: (Reading) “And that the first time that I did not have three men, which is the normal watch, that I would require every man to stand his watch. And on this [81] ship, as on most ships I have had, that system worked out rather well. So whether somebody was standing his watch, I don't know. I did have three men on watch as far as the deck department was concerned, all the time the ship was in Sasebo.

(Deposition of E. L. Wheeler.)

“Q. On May 8th when the ship sailed was Cooper aboard?

“A. On May 8th when the ship sailed Cooper was not aboard.”

And there is cross examination following.

Mr. Haid: Cross examination is waived.

Mr. Mitchell: We offer these depositions in evidence, your Honor, in entirety. I have only read those portions to shorten the amount of time we take of the Court.

Mr. Resner: We object, your Honor. Anything that goes into evidence is taken down by the shorthand reporter. There isn't any rule that allows a deposition in and of itself to be an evidentiary document.

Mr. Mitchell: Would your Honor care that I read the entire depositions in? The further portions of these are repetitious of the other depositions.

The Court: Well, you have got the evidence in the record that you wish, haven't you?

Mr. Mitchell: Yes.

The Court: That's final. That will be sufficient for all purposes in this case.

Mr. Mitchell: We offer the entire matter in for the record [82] of excluded evidence then, your Honor.

The Court: The answer to that is you are not concerned about this surplusage in this deposition that you have indicated serves no purpose.

Mr. Mitchell: We wanted the entire depositions in evidence, your Honor, but to save time we have selected these portions.

The Court: At the same time, saving time is no answer to the legal proposition itself. In any event, the Court has ruled, gentlemen. We will proceed with this case.

Mr. Meadows: Your Honor, so that we may know how to proceed in the future in these matters, I would like to know if your Honor would make a ruling on these depositions, whether your Honor would consider it to be absolutely necessary to read all portions that we consider to be material rather than just offer the depositions themselves in evidence.

Mr. Resner: If your Honor please, we are only trying this case and not some case the Government may bring next week or next year. It is not this Court's problem, or any Court's problem to educate the Government's attorneys.

Mr. Meadows: We maintain, your Honor, that read in their whole these depositions can be of help in showing the intention of the claimants and reading only scattered portions is not as beneficial.

The Court: You forget that the Court has ruled. You have a record here. [83]

Mr. Meadows: Thank you, your Honor.

The Court: You may proceed.

Mr. Mitchell: This will complete the evidence we have present at this time, your Honor, but we would like leave for a continuance to bring in the deposition of the chief engineer Snoopkagel, when

he becomes available. He is now at sea on a ship which shall return the early part of the coming month, to the best of our knowledge.

Mr. Resner: We object. They are supposed to be ready at the time of trial. This is a summary proceeding.

Mr. Haid: This case was set at the Government's request.

Mr. Mitchell: This case was not set at the Government's request, your Honor.

The Court: How was it set?

Mr. Mitchell: It was set at a hearing that came about when they petitioned for a return of their money in the registry.

Mr. Haid: The Government certainly made no objection.

Mr. Resner: As a matter of fact, Judge Carter said he was going to hear this case at once because the law provided these were summary proceedings and should be heard at once, and only at the Government's request, because they pleaded for time to produce witnesses and depositions, did he continue it for trial until last Friday, and the Government came in here Friday and said they were ready.

Mr. Meadows: We only ask this time—— [84]

Mr. Resner: This is the time for trial.

The Court: It was indicated to me on last Friday before we adjourned that the Government wasn't ready. That was indicated to me. That was the reason I gave them a continuance at that time until this morning. Now there will be no further continuance.

Mr. Resner: Thank you, your Honor.

If that is the Government's case, your Honor, on behalf of petitioner Oslin in matter 20,955, it is our contention that they haven't proved anything set forth in their petition, and I ask your Honor for an order dismissing the petition of the United States and entering decree for petitioner Oslin on his petition.

Mr. Haid: I am going to join in that, your Honor, on behalf of petitioners Mr. Staples in 20,954 and Mr. Cooper in 20,956. There is nothing before the Court to show that these men deserted the vessel.

The Court: That will be the order. Prepare your judgment, gentlemen.

Mr. Resner: Thank you, sir.

Could we have a moment to consult about a procedural matter in this case, your Honor?

The Court: Yes.

Mr. Resner: What we are discussing is this, your Honor——

The Court: I know what you are discussing.

Mr. Resner: The money of these three seamen is held in the registry by Mr. Welch, commissioner, and the clothes are held by the commissioner down at Sansome Street, and we were discussing, Mr. Haid and I, the form of the order. Since the men are here in Court and are available, I assume the order would direct that their money and effects be turned directly over to them.

The Court: That will be the order.

Mr. Resner: Thank you Judge.

Mr. Meadows: Your Honor, before you enter the order may I be heard for just a minute.

The Court: What is it?

Mr. Meadows: May I be heard for one minute before you enter the order in these cases?

The Court: Oh, yes.

Mr. Meadows: Your Honor, as you noticed, there is the petition on file and the claims in this matter, and it is our position that had we been able to offer the log—and we of course maintain that they were properly admissible in this case—the burden of proof is on the petitioners and claimants to secure this in evidence, and since there is no evidence to counter it, they have not met the burden of proof. I just pointed that out.

The Court: Yes, but they come in here and charge them with desertion. It hasn't been proved. It is as simple as that. Period. [86]

Mr. Meadows: That is all, your Honor. I just wanted to mention that.

Mr. Resner: Thank you, your Honor.

Mr. Meadows: Your Honor, one more thing, if I may, before——

The Court: What's that?

Mr. Meadows: One more thing. Since your Honor has ruled——

The Court: Don't miss anything. Proceed.

Mr. Meadows: We would like to know if your Honor would stay the payment of the wages to these claimants pending an appeal in this matter.

Mr. Resner: We oppose that, your Honor.

The Court: I didn't follow it.

Mr. Resner: They want to file a notice of appeal and they want to tie up the money while they take an appeal. We object to that, your Honor.

The Court: If you will go and get the order I will sign it forthwith so that you won't be bothered about that.

Mr. Resner: Thank you, very much, your Honor. We will do that.

Mr. Meadows: Thank you, your Honor.

The Court: You're welcome, sir.

Mr. Resner: The point is this, your Honor: The Government anticipating its utter failure to be able to do anything here, came in with a notice of appeal. They have got to get a stay of the disposition of the money from the court of appeals. [87]

The Court: That is what he went out to get now.

Mr. Resner: We want to be heard in the court of appeals. We will get over and talk to the Chief Judge if that is going to be tried before it happens. It would seem to me, your Honor——

The Court: I want everybody to enjoy their freedom. They can do whatever they wish; I'm not stopping them.

Mr. Resner: What I can't understand is why the Government hasn't got better things to do than to persecute these three seamen.

Mr. Haid: First time I have ever seen a notice of appeal before the order was entered.

The Court: If there is any further assistance that I can be——

Mr. Resner: They can't file and serve notice of appeal until there is something to appeal from,

your Honor. There is nothing to appeal from here yet.

Mr. Meadows: There will be. There has already been an order entered in the record. Do you want to argue that point?

Mr. Resner: No, I don't want to argue it. We are going to have a formal written order. That is what they appeal from. They don't appeal from the oral order.

The Court: I'm glad that all these gentlemen are taking this in stride, doing the best you can under difficulties. The only difficulty here is the Government wasn't prepared. [88] That's all. It is as simple as that. Any court will understand that if they read the record in this case.

Mr. Resner: Thank you, your Honor. I think your Honor is correct.

(Adjournment.) [89]

[Endorsed]: Filed Oct. 15, 1957.

RESPONDENT'S EXHIBIT "B"

(For Identification)

OFFICIAL LOG-BOOK

Merchant Marine of the United States, Treasury
Department, United States Coast Guard, Ves-
sel: U.S.N.S. Escambia.

* * * * *

Volume 2, page 5: lines 1 through 20:

List of Crew and Report of Character:

Nov. 20, 1956, Sasebo, Japan—Bernard D. Oslin
Z503798-DI Dk. Maint. Absent without leave from

his vessel and from his duties. 0800-1700. Fined 2 days pay—\$23.73. Copy of the logging was delivered to Oslin. The above entry was read audibly and distinctly to Oslin and he replied: "No reply".

/s/ E. L. Wheeler, 1/o,
/s/ M. W. Mote, Master.

2/8/57, Kaohsiung, Formosa—Bernard D. Oslin Z503798 DI Dk. Maint. Absent without leave—1200. Fined 2 days pay \$23.73. This entry was read audibly and distinctly to Oslin and he replied: "I deny the charge".

Feb. 13, 1957, Sasebo, Japan—Bernard D. Oslin Z503798 DI Dk. Maint. Absent without leave 1510. Fined 2 days pay \$25.40. The above entry was read to Oslin audibly and distinctly and he replied: "No Reply".

/s/ E. L. Wheeler, 1/o,
/s/ M. W. Mote, Master.

Page 6, Lines 25 through 48:

Feb. 8, 1957, Kaohsiung, Formosa—Richard C. Cooper, Z 5229 AB. Absent without leave 1200. Fined 2 days pay \$21.93. The above entry was read to Cooper audibly and distinctly and he replied: "Sailing board was not posted."

/s/ E. L. Wheeler, 1/o,
/s/ M. W. Mote, Master.

Feb. 13, 1957, Sasebo, Japan—Richard C. Cooper Z 5229 AB. Absent without leave at 1510. Fined

2 days pay \$23.47. The entry was read to Cooper audibly and distinctly and he replied: "I was aboard one hour before sailing".

/s/ E. L. Wheeler, 1/o,

/s/ M. W. Mote, Master.

May 1, 1957, Manila Bay—Richard C. Cooper Z 5229. Neglected his duty in failing to stand his watch 0000-0400. Fined 2 days pay \$23.47. This entry was read to Cooper audibly and distinctly and he replied: "No Reply".

/s/ E. L. Wheeler, 1/o,

/s/ M. W. Mote, Master.

Feb. 13, 1957, Sasebo, Japan—James P. Staples. Z394273. Pumpman. Absent without leave 1510. Fined 2 days pay \$29.60. Entry was read audibly and distinctly to Staples and he replied: "Was aboard 1 hour before ship sailed".

/s/ E. L. Wheeler, 1/o,

/s/ M. W. Mote, Master.

* * * * *

Pages 17, 18 and 19:

Sasebo, Japan, May 8, 1957—James P. Staples Z 394-273-DI. Pumpman. Deserted the vessel and his duties on May 5, 1957. Staples complained to the Chief Engineer at 0700 on May 5th that he was too tired to continue his duties of discharging the cargo. He was relieved by the Chief Engineer, who subsequently performed the duties of Pumpman until the cargo was discharged. Staples instead of

resting to resume his duties went ashore and did not return to the vessel even though he was informed that the (17) vessel was to Sortie for tank cleaning. He was warned by the Master that if he failed to join the vessel he would be logged as a deserter. Since he was seen ashore by various ships crew members and officers including the Master and warned to return and perform his duties and he was in possession of all his faculties he is presumed to have wilfully deserted and is therefore declared a deserter under Sect. 4596 USC First Paragraph and all his pay and emoluments as well as his personal effects declared forfeit. His personal effects were inventoried and are in possession of the Master.

/s/ E. L. Wheeler,

/s/ M. W. Mote, Master.

Sasebo, Japan, May 8, 1957—Bernard D. Oslin Z 503-798-D-1 D. Maint. Deserted the vessel and his duties May 7, 1957. Oslin was warned by the Master while ashore that failure to return to his vessel and his duties would constitute desertion. He was in possession of (18) of all his faculties and understood the admonition. Therefore, as he failed to return to the vessel and his duties he is hereby declared a deserter and under Sect. 4596 USC First Paragraph all pay and emoluments as well as his personal effects are declared forfeit. His personal effects were inventoried and are in the possession of the Master.

/s/ E. L. Wheeler,

/s/ M. W. Mote, Master.

Sasebo, Japan, May 8, 1957—Richard C. Cooper Z 5229-D-1 AB. Deserted the vessel and his duties May 7, 1957. Cooper requested Mutual Release Discharge and upon being informed by the Master that it was impossible, was also warned that failure to complete his contract as per the shipping articles would constitute desertion. Cooper went ashore May 7th and sent a messenger aboard on May 8th to get money he had left aboard. Since he was well aware of sailing time and in possession of all his faculties he is hereby declared (19) a deserter under Sect. 4596 USC First paragraph and all pay and emoluments as well as personal effects forfeit. Effects inventoried. (20)

/s/ E. L. Wheeler,

/s/ M. W. Mote, Master.

* * * * *

[Endorsed]: No. 15730. United States Court of Appeals for the Ninth Circuit. United States of America, Appellant, vs. James P. Staples, Bernard D. Oslin and Richard C. Cooper, Appellees. Transcript of Record. Appeals from the United States District Court for the Northern District of California, Southern Division.

Filed: October 3, 1957.

/s/ PAUL P. O'BRIEN,

Clerk of the United States Court of Appeals for the Ninth Circuit.

In the United States Court of Appeals
for the Ninth Circuit

No. 15730

UNITED STATES OF AMERICA,

Appellant,

vs.

JAMES P. STAPLES, BERNARD D. OSLIN,
and RICHARD C. COOPER, Appellees.

STATEMENT OF POINTS ON WHICH
APPELLANT INTENDS TO RELY

Comes now Appellant United States of America and states that it intends to rely in this appeal upon the following points:

1. The District Court erred in excluding the relevant log entries from evidence.

2. The District Court erred in holding that the burden of proof was on the United States to establish that appellees' failure to return to their vessel prior to its departure from Sasebo constituted desertion; i.e., to establish that appellees were not entitled to the relief sought in their petitions.

3. The District Court erred in granting appellees affirmative relief in the absence of any showing that they intended to return to their vessel prior to its departure from Sasebo.

4. The District Court erred in not holding that appellees had deserted from their vessel.

5. The District Court erred in denying the Government's motion for a judgment by default on the petition of Appellee Oslin.

6. The District Court erred in granting appellees' petitions and in denying the Government's petitions.

GEORGE COCHRAN DOUB,
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PAUL A. SWEENEY,
/s/ KEITH R. FERGUSON,
/s/ GRAYDON S. STARING,
ALAN S. ROSENTHAL,
Attorneys, Department of Justice.

[Endorsed]: Filed November 3, 1957. Paul P. O'Brien, Clerk.